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SECTORAL POLICY QUESTIONS: INDUSTRIAL DEVELOPMENT DECADE FOR AFRICA

Implementation of the programme for the Second Industrial Development Decade for Africa (1993-2002)

Report of the Secretary-General

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I. INTRODUCTION

1. In a rapidly changing global economy, Africa faces formidable challenges which further underline the need for sustained implementation of the programme for the Second Industrial Development Decade for Africa (1993-2002). Many specialized agencies as well as funds and programmes of the United Nations provide assistance that supports the efforts of African countries in achieving the objectives of the Second Decade. The present report, which is submitted in response to General Assembly resolution 50/94 of 20 December 1995, focuses on the activities of the Economic Commission for Africa (ECA) and the United Nations Industrial Development Organization (UNIDO), the two main organizations directly involved in the implementation of the programme for the Second Decade, as well as the newly adopted Alliance for Africa's Industrialization initiative. The Alliance has been endorsed by the Assembly of Heads of State and Government of the Organization for African Unity (OAU) at its thirty-second and thirty-third ordinary sessions, as the new mechanism for the attainment of the goals of a refocused programme for the Second Decade.

2. The formulation and implementation of programmes for the Second Decade took into consideration the following objectives of the Decade:

- Structural transformation of African economies:
  - Industrial strategies and policies;
  - Development of industrial subsectors, especially agro-industries;
  - Environment and energy;
- Linkages between industry and other economic sectors:
  - Linkage between industry and agriculture;
  - Support to transport and communications and linkage with the United Nations Conference on Trade and Development (UNCTAD);
- Mobilization of financial resources for:
  - Investment promotion and transport of technology;
  - Project identification, preparation and promotion;
- Private-sector development;
- Human resources development and training;
- Promotion of regional/subregional industrial cooperation:
  - Support to regional and subregional organizations;
  - Cooperation with OAU/ECA/African Development Bank (ADB);

- Cooperation with other international organizations.

3. In implementing resolution 50/94 it was imperative to consider the global economic trends summarized in section II below and the challenges facing African industries and the private sector. In section III details of specific projects and programmes implemented under the Second Decade and issues related to funding are addressed. The report presents in section IV efforts to reorient the programme for the Second Decade in the light of these global trends and as an integral part of the reform process in UNIDO and ECA.

II. ECONOMIC REFORM, GLOBALIZATION AND INDUSTRY IN AFRICA

4. World industry is undergoing a revolutionary transformation of production structures and technologies. The revolution is characterized by the growing globalization of industrial production based on a far-reaching liberalization of international trade and investment flows. The combination of the increased global integration of industrial production and the spread of new manufacturing, information and communication technologies holds the promise of a major increase in world prosperity. While developing countries have significant opportunities to access markets, new products and new technologies, not all will automatically be able to exploit these opportunities.

5. Despite significant improvements in Africa's economic growth performance in the last two years, characterized by a decline in the number of countries experiencing negative growth and an increase in the number of countries recording real growth rates in their gross domestic product (GDP), the continent's overall economic conditions remain precarious. While there is significant progress in the commitment of Governments to market reforms, empowerment of the private sector and macroeconomic stabilization, the performance in industry has been weak. It is evident that it is becoming ever harder for African countries to build and sustain competitiveness on the basis of lower-order comparative advantages such as inherited natural resources or low-wage labour. Further, globalization is changing the rules of the game for all participants but in the process the gap is widening between those nations that achieved the industrial critical mass necessary to become competitive globally, and those left behind. As a result, the skills and technology entry barrier to becoming an industrial economy has risen substantially.

6. The problem of the widening industrialization and technology gap is acknowledged to be particularly acute in sub-Saharan Africa, with 33 of the world's 48 least developed countries, while macroeconomic stabilization programmes have been adopted by most African countries since the early 1980s in an attempt to create an enabling environment for long-term growth, they have usually not included any specific measures to promote industrial development. Their results have underlined the fact that while macroeconomic stability is a necessary precondition, it is not sufficient in itself for economic transformation. Macroeconomic reforms need to be complemented by strategies and programmes designed to generate the required supply response from the industrialists and the private sector in general. Adjustment programmes assumed - wrongly - that getting prices right was sufficient to ensure industrial recovery and growth. Competitiveness, the need for technological

upgrading, a focus on style, quality, design and timely delivery: none of these elements found their way into traditional adjustment programmes, where it was automatically assumed that comparative cost, in the form of cheap labour, would be sufficient. Yet almost all of the evidence shows that this was not the case.

7. Africa's poor economic performance is particularly reflected in, and to a great extent caused by, a correspondingly poor industrial performance. In many countries the rate of growth of manufacturing value added (MVA) has fallen short of the rate of overall GDP growth, resulting in a declining share of MVA in GDP. Sub-Saharan Africa has lost market share in terms of MVA, with its share of global manufacturing production halving from 0.6 per cent in 1970 to 0.3 per cent in 1995. The share of manufacturing in total African exports has barely changed over the last two decades and is still below 10 per cent.

8. The pattern of industrialization has also been lopsided with six countries contributing almost three fourths of the regional MVA. One country, South Africa, accounts for 58 per cent of regional MVA, while the five next most industrialized States - Nigeria, Cameroon, Zimbabwe, Côte d'Ivoire and Kenya - account for another 16.5 per cent. Further, four fifths of sub-Saharan Africa's industrial production is classified as low-technology and the shares of the capital-intensive and higher-technology subsectors have declined.

9. The crucial challenge facing policy makers in government and the multilateral agencies is that of framing a new industrial strategy for sub-Saharan Africa in the twenty-first century. Whatever its limited success in other fields, structural adjustment has not yet succeeded in reversing the recent trend towards de-industrialization and in creating an appropriate policy environment for sustained industrial growth. In the light of the above, it is critical to emphasize the need for renewed efforts to accelerate industrial development in Africa through private-sector-led strategies and new global partnerships. In this connection, the Assembly of African Heads of State and Government of OAU at their thirty-third ordinary session, in June 1997, adopted the Harare Declaration (Dec.4(XXXIII)) on African industrialization in which they, inter alia, decided to redouble efforts to promote sustainable industrial development to overcome major economic and social constraints and achieve a greater stake in the global market place as called for in the Lagos Plan of Action and the Abuja Treaty Establishing the African Economic Community.

10. The leaders also reaffirmed their belief that, without sustainable industrial development, African economies would be condemned to persistent economic crisis, dependence on humanitarian relief and deepening poverty, despair and political unrest with dire consequences for global peace and stability. In that connection, they endorsed the launch of the Alliance for Africa's Industrialization and adopted its plan of action for reorienting the Second Decade towards the establishment of partnerships for the promotion of private-sector-led industrial development.

III. UNIDO AND ECA SUPPORT PROGRAMMES

A. UNIDO's support programme and activities for the Second Decade

11. UNIDO allocates from its regular budget funds every biennium specifically for the implementation of projects and programmes under the framework of the Second Decade. The financial allocation of the programme for the Decade for the period 1994-1995 was US$ 10,536,900, and for the period 1996-1997, $10,600,000. The services delivered by the programme were also provided, taking into consideration the objectives and areas of concentration of the United Nations New Agenda for the Development of Africa in the 1990s. It is significant to note that the least developed countries accounted for a high proportion of projects and activities financed from the funds allocated for the Second Decade. Indeed, it was an established guideline that at least 50 per cent of the resources of the programme should benefit projects and activities for least developed countries.

12. During the biennium 1994-1995, a total number of 104 projects were undertaken, 65 per cent of them at the regional level and 35 per cent designed and implemented at the national level. During the same period, some 81 short-term technical advisory services missions were carried out to assist Governments and private-sector entities in various countries. In the 1996-1997 biennium, 96 projects had been implemented as of 31 August 1997, 40 per cent of which were at the national level and 60 per cent at the regional level.

13. The technical cooperation projects carried out included support to industries establishing linkage between industry and agriculture, with special emphasis on food production and food processing, and between industry and transportation and communications. The assistance given covered agro-related industries such as agricultural and food processing machinery, fertilizers, pesticides and local manufacture of transportation, communications and telecommunications equipment. Emphasis was also placed on programmes including multi-country and large-scale national projects promoting economic integration at subregional and regional levels as a part of efforts directed towards the establishment of the African Economic Community. Special attention was accorded to the development and promotion of small- and medium-scale industries in an effort to promote local entrepreneurship and private-sector development. Equally important were cross sectoral priorities such as human resources development, technology development, acquisition and transfer, formulation of industrial strategies and policies, integration of women in industrial development, energy and environment.

14. Several projects and programmes were focused mainly on strengthening industrial institutions, private-sector development, small- and medium-scale industry, investment promotion and technological development, the introduction of cleaner production techniques and the development of human resources for industry. Examples of successfully approved projects and programmes under the Decade include:

- Promoting partnership between Africa's budding entrepreneurs from the Jua Kali in Kenya and rural women in Burkina Faso to boost

entrepreneurship, create new manufacturing capabilities and promote quality and new product lines;

- Increasing the value added to the processing of local raw materials; the transformation of hides and skins into exportable leather products in eight eastern and southern African countries; the manufacture of wood products in order to provide opportunities for the environmentally sustainable development of forest resources in seven western and central African countries; the processing of spices and aromatic products in Zanzibar; and the introduction of new techniques for the production of salt in the Plateau State of Nigeria;

- In the Mozambique Channel and the Gulf of Guinea, UNIDO is working in partnership with African countries in the creation of new enterprises and in the establishment of a private-sector-led industrial base through its integrated assistance to small- and medium-scale industrial enterprises, and through the establishment of industrial associations, SMI clusters and subcontracting schemes with larger enterprises;

- UNIDO is equally involved in the promotion of better food quality and food security through the establishment of quality guidelines in the food sector in seven African countries and through its promotion of enhanced local food processing;

- UNIDO is actively engaged in the introduction of cleaner production techniques in industry in many African countries, ranging from the phasing out of ozone-depleting substances to the identification of appropriate solutions to the problem of mercury pollution caused by artisanal gold mines;

- Mobilizing investment resources for African industry, building partnerships between African and foreign enterprises, and promoting technology transfer is one of the major activities of UNIDO which is gradually but increasingly, showing successful results in Cameroon, Ghana, Madagascar and the United Republic of Tanzania.

15. It is important to note that the resources made available by UNIDO in support of the programme for the Second Decade, as had been understood from the inception of the programme, is to be seen as seed money that should lead to the mobilization of additional resources, both bilateral and multilateral from within and outside countries to support the development of the industrial sector and particularly the private sector. Although mobilization of financial resources has become a difficult exercise over recent years mainly as a result of the decline in official development assistance (ODA) and multilateral grants, a few successful cases can be reported in which the seed money concept has fully operated and achieved remarkable results:

- A project for the establishment of multi-purpose platforms for food processing specifically designed to alleviate the burden of grain and other foodstuff processing on women in rural areas started in Mali and Burkina Faso with initial funding from the UNIDO programme for the

Second Decade and was later able to attract a sizable contribution from the International Fund for Agricultural Development (IFAD) and from the United Nations Development Programme (UNDP). The success of the project has prompted many requests from other countries. The concept is now being introduced through an integrated regional programme to five other countries in West Africa;

- An initial funding from UNIDO to assist the Government of Côte d'Ivoire in updating and finalizing an analysis of its industrial subsectors as part of its economic vision for the year 2025 prompted UNDP to join the exercise with a contribution of $500,000. Further consultations are under way between the Government and the African Development Bank, which has shown a keen interest in the agro-industrial component;

- In Uganda a Decade-related project to enhance quality control and standardization through the introduction of ISO 9000 and ISO 1400 with the aim of improving the competitiveness of local industry, has attracted $6 million from UNDP and the European Union;

- A preparatory assistance provided under the Second Decade as a follow-up to a successful investment Promotion Forum held in the United Republic of Tanzania in 1996 has led to the development of a large-scale integrated programme for the development of the private sector supported by UNDP in the amount of $2.5 million.

B. ECA's support programme and activities for the Second Decade

16. The Economic Commission for Africa has continued to concentrate its activities on providing technical assistance to member States in the field of policies, planning and institution-building with a view to accelerating the implementation of the programme for the Second Decade. It must be stressed, however, that ECA support programme and activities for the Decade were wholly financed from the Commission's regular budget. ECA support activities to the Decade were mainly focused on the preparation of technical publications, research studies and the organization of ad hoc expert group meetings.

17. ECA carried out a number of studies in support of the Second Decade programme implementation. Technical studies and ad hoc expert group meetings were also organized during the period under review to give high-level African experts the opportunity to discuss and share their experiences on specific topics and review the studies before finalization, reproduction and distribution to African end-users including planners, policy makers, industrialists, manufacturers and potential investors. The subjects of the studies included:

- Possibilities and perspectives for the production of basic chemicals from natural gas in Africa;

- Promotion of investment and industrial projects in the context of the Second Decade;

- Technology transfer, acquisition and negotiation;
- Development of African metal industries based on South-South cooperation;
- Utilization and perspectives for the integrated development of natural resources and for the production of phosphate;
- Manual for trainers for small-scale industries;
- Manufacturing of irrigation equipment in the Sahel countries;
- The leather and leather products industry in Africa: current status and prospects;
- Measures to consolidate privatization in the African industrial subsector with special emphasis on the Second Decade;
- The study of institutions and modalities for promoting the financing of small and cottage industries in Africa.

18. Within the context of the Second Decade, the ECA secretariat has produced various technical publications. In the field of industrial policies and planning, the thrust of the activities of ECA was directed at assisting African countries in reformulating existing industrial policies and plans as well as formulating new policies whenever necessary with a view to reorienting such policies and plans towards facilitating the implementation of the programme for the Decade. The Commission's activities took the form of recurrent and non-recurrent publications, including:

- Investment and Financial Policies and their Impact on the Development of Indigenous Industries;
- Lessons from Selected Newly Industrialized Countries for the Effective Implementation of the Second Decade;
- Sustainable Financing of Selected Second Decade Multinational Industrial Projects in African subregions;
- Selected technologies available with or without Licensing in the context of the Second Decade;
- Factors in Enterprise Formation in African Countries;
- Possibilities and Perspectives on the Development of the Petrochemical Industries in North Africa on the basis of Local Reserves of Oil and Gas;
- Building Materials and Construction Industries in Africa: Constraints and Prospects for Socio-Economic Development;

- Study on Africa's Potential Industrial Comparative Advantage in an Emerging New Economic Order;

- Modalities for South-South Cooperation;

- Approaches to the Formulation of Comprehensive Construction Industries Planning and Implementation Policies in Africa;

- Lessons for Africa from Selected Case Studies on the Development of the Mining and Metallurgical Industries;

- Possibilities of Utilization of Biomass for the Production of Basic Chemicals in Africa;

- Survey of Africa's Basic Industries;

- Survey of Africa's Agro-based Industries;

- Promotion of African Fertilizer and Petrochemical Industries.

19. Four issues of the bulletin, Focus on African Industry, were published. The articles in the four publications covered a wide spectrum of issues, including the critical role of the informal sector in the development of indigenous industrial capabilities; the development of international competitiveness; the private sector and entrepreneurship development; privatization in Africa; the Uruguay Round Agreements and implications for African industry; and the current status of African metallurgy industries and prospects for the year 2000.

20. In order to assist African countries in the development and promotion of entrepreneurial and technological capabilities, two Directories of Project Profiles for Small-scale Industries were produced. The two directories provided techno-economic information on, among other things, products to be manufactured, process description, capacity and specifications for plant and machinery, raw materials and other inputs, financial requirements in the form of fixed and working capital, marketing and product distribution, and a programme to assist and advise small-scale industrial entrepreneurs in their manufacturing activities. A Manual for Trainers in the Development of Entrepreneurship in Small-scale Industries was produced and disseminated.

21. In order to assist member countries in their efforts to develop and promote industrial cooperation at subregional and regional levels, in 1993 the ECA secretariat prepared a technical publication on Industrial Development Priorities and Subregional Cooperation in the context of the Second Decade. The document identified industrial priorities in each subregion and made concrete recommendations for accelerating African industrial development.

IV. REORIENTING THE SECOND DECADE

22. In resolution 50/94, the General Assembly called for further assistance to African countries with a view to improving the competitiveness of the industrial

sector in Africa in the light of globalization of production and the growth of related trade, investment and technology flows. As an input into the process of reviewing and reorienting industrial development strategies in Africa to enhance industrial growth and competitiveness, UNIDO, in collaboration with ECA and OAU, adopted two complementing strategies: (a) an in-depth mid-term evaluation of the Second Decade, and (b) extensive consultations with the Bureau of the Conference of African Ministers of Industry, key private-sector groups, African policy makers, experts and representatives of other United Nations agencies to establish a new partnership for promoting private-sector-led industrial development in Africa.

A. Mid-term evaluation of the Second Decade

23. A mid-term evaluation of the programme for the Second Decade was completed in 1997. The specific objectives of the evaluation were: (a) to assess the achievements of the programme against its stated objectives and expected outputs; (b) to identify and assess the factors that have facilitated the achievement of the programme's objectives, as well as those factors that have impeded the fulfilment of those objectives; (c) to propose a course of action, both at the policy and the programme implementation level, and to draw lessons therefrom for the design, implementation and monitoring of the programme for the future; and (d) to examine the relationship of the programme to the Alliance for Africa's Industrialization, the new initiative launched by African heads of State and Government at Abidjan on 23 October 1996.

24. The evaluation revealed that, like the Lagos Plan of Action, the Second Decade was an expression of intentions and desires for Africa's industrialization. The evaluation noted that efforts should be redoubled to translate the objectives of the Second Decade into concrete and practical programmes for the implementation of which funds could be mobilized. Special implementation mechanisms, at the country level need to be established and/or strengthened, and the existing national machinery, i.e. ministries of industry and trade or planning, should be encouraged to assume that responsibility.

25. Further, implementation strategies advocated were not adopted at the country level, the nascent African private sector was not fully prepared to assume the new responsibilities in the industrial investment process and financial support, including term lending, from both domestic and foreign sources was not readily available for industrial projects.

26. The evaluators recommended that:

- The scope and coverage of the programme should be narrowed to make it compatible with a country's capacity to mobilize its human, natural and financial resources for implementation;

- Governments should concentrate on those segments of the programme that are considered necessary prerequisites for industrial development while leaving the productive and manufacturing aspects to the private sector;

- Governments should intensify their efforts to promote the economic environment and political stability that will make private-sector initiatives possible and productive;

- The private sector and the industrial community as a whole should be given support to build up their capacity and enhance their competitiveness;

- The donor community especially should be invited to take a serious look at the revised priorities, including the Alliance programme for private-sector enhancement through partnerships, and the opinions, endorsement and participation of the private sector and of chambers of commerce and related business associations should be solicited.

B. The Alliance for Africa's Industrialization

27. Bearing in mind the findings of the mid-term evaluation of the programme for the Second Decade and based on extensive consultations with various stakeholders in Africa, particularly private-sector groups and the Bureau of the Conference of African Ministers of Industry (CAMI), consensus was built around the launch of a new initiative to revitalize the programme for the Decade. The Alliance for Africa's Industrialization was thus launched in October 1996. The Alliance recognizes that globalization has changed the nature and pattern of industrialization.

28. In the new global context of liberalization, the private sector is assuming a large role in economic development, which is particularly important in rekindling African industrial development. It is in this context that the Alliance provides a mechanism for partnership between African leaders and the private sector to define industrial development visions for the next millennium and to commit political will and resources to their achievement. The goals of the Alliance are:

- To develop African-generated industrial development visions and strategies addressing, directly and effectively, Africa's principal economic problems of low industrial output, food insecurity, unemployment, poverty and environmental degradation;

- To stimulate increased international commitment to African industrial development and generate support for sustainable industrial growth and competitiveness in Africa through the strengthening of national capacities at the policy, institutional and enterprise levels;

- To promote regional industrial relationships aimed at economies of scale and meeting the emerging demands in regional and international markets, within the context of environmentally sustainable development.

29. The Alliance is also an input into and complementary to the United Nations System-wide Special Initiative on Africa and the United Nations New Agenda for the Development of Africa in the 1990s. The Special Initiative provides a

unique opportunity for inter-agency cooperation and has set five priorities, namely water, food security, governance, social and human conditions and resource mobilization. The Alliance synthesizes the industrial dimensions of the Special Initiative into a consistent programme for poverty alleviation through employment creation and enhancement of industrial competitiveness. In so doing, it takes full cognizance of the Initiative principle that, while Africa needs external support, it is the Africans themselves, men and women, who must take charge of their destiny and who should have the fundamental responsibility for bringing about development on their continent.

30. Under the Alliance the initial thrust is on linking industrial and agricultural development. This is fully in line with the predominant role of the agricultural sector in African economies, the potential for long-term comparative advantage of agro-based production, the multiple linkages between the industrial and agricultural sectors and their potential socioeconomic/economic impact through SMEs and informal-sector activities, particularly in rural areas. In this context, agro-industrial interrelationships encompass both the forward and backward linkages, involving industries such as agro-processing (food, wood, leather, textiles), agricultural input industries (agricultural machinery, equipment, tools, irrigation equipment, water treatment systems and fertilizers), as well as equipment and machinery for agro-processing industries.

31. Notwithstanding the initial focus on agro-industrial linkages, it is important to emphasize that the strategy of the Alliance will not be restricted to these industries as the diversity of resource endowments and policy priorities may warrant the adoption of different strategies in some countries. In this context, other industries in which African countries enjoy comparative advantages will be promoted, including mining, resource-based processing industries and some skill-intensive industries based on international subcontracting. The aim is to address those specific subsectors to which national decision makers attach greatest priority. At the same time, it is clear from the correlation between export expansion, inflows of foreign direct investment and industrial economic growth that countries following inappropriate policies and lacking adequate skills and technological capacities will be left behind in the globalization process. The acceleration of economic growth and industrial expansion requires an emphasis on openness, an optimal balance between market forces and selective phased intervention, macroeconomic stability and social programmes targeted at the most vulnerable groups.

C. The Alliance Plan of Action and its implementation

32. The Conference of African Ministers of Industry (CAMI), at its 13th meeting, held at Accra in May 1997, adopted a Plan of Action for the implementation of the Alliance. The Plan of Action spells out specific objectives to be achieved in order to fulfil the goals of the Alliance and the specific roles and actions to be undertaken (at the national, subregional and regional levels) and the areas where donors assistance would be most needed.

33. In his message to CAMI, the Secretary-General of the United Nations indicated that the Alliance would complement the United Nations Special Initiative, especially as the initiative placed emphasis on forging partnerships

between Governments and the private sector at the national, subregional and international levels. The implementation of the Plan of Action for the Alliance will be based on lessons derived from the mid-term evaluation of the Second Industrial Decade for Africa: in particular, the need for ownership of the Alliance by Africans themselves, demand orientation and bottom-up approach in programme development and the importance of constructive partnerships involving new actors, from within as well as outside Africa.

34. To ensure adequate African involvement in the policy- and decision-making process of the Alliance, an Alliance Steering Committee is being established by CAMI. The Steering Committee will consist of selected ministers of industry and eminent representatives of the private sector. At the country level, the key formulation and implementation mechanism for the plan of action will be the Industrial Partnership Council, consisting of representatives of the private sector and Government. UNIDO will assist countries in the programmes of action, including specific programmes in line with national priorities for which the necessary resources will be mobilized. UNIDO country directors will be particularly involved in providing the necessary support. To maintain global attention on the Initiative and African industrialization efforts, a special Group of Patrons, composed of selected heads of State, is being set up under the auspices of OAU to serve as advocates for African industrialization.

35. A proposal for the establishment of a special fund for the Alliance was discussed and approved by CAMI at its 13th meeting and fully endorsed by OAU. UNIDO will contribute to the Special Fund and consultations will be conducted by the Chairman of CAMI among member States and other United Nations agencies to raise pledges to the Fund. It is envisaged that a donors meeting will be organized during the last quarter of 1998 to finance national programmes. Other financing options will include development of high-impact integrated programmes in collaboration with other United Nations agencies under the auspices of United Nations System-wide Special Initiative on Africa and sectoral investment promotion forums at the national and subregional levels to attract private investment and foreign direct investment into industries.

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Letter dated 15 October 1997 from the Permanent Representative of Cyprus to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith the text in English and French of the joint legal opinion dated 24 September 1997 prepared by three prominent international jurists and professors of international law, Mr. James Crawford, of the University of Cambridge, Mr. Gerhard Hafner of the University of Vienna and Mr. Alain Pellet of the University of Paris, X - Nanterre, on the eligibility of the Republic of Cyprus to become a member of the European Union. It is noted that all three authors of the opinion are also members of the International Law Commission.

The above legal opinion concludes that the Republic of Cyprus is fully eligible to become a member of the European Union and authoritatively rejects the positions of the representative of Turkey contained in documents A/51/951-S/1997/585 dated 25 July 1997 and A/52/404-S/1997/757 dated 29 September 1997. It particularly concludes that there is no basis for the view that Cyprus is prevented by the Treaty of Guarantee, or by any provisions of the Cyprus Constitution of 1960, from becoming a member of the European Community .

I should be grateful if the present letter and its annex were circulated as a document of the General Assembly, under agenda item 61, and of the Security Council.

(Signed) Nicos AGATHOCLEOUS
Ambassador
Permanent Representative of
the Republic of Cyprus to
the United Nations

ANNEX*

[Original: English and French]

OPINION

Republic of Cyprus: Eligibility for EU Membership

Summary

1. We are asked whether the Republic of Cyprus is eligible to become a member of the European Union. In this regard it is necessary to consider:

(a) Article 1 paragraph 2 of the Treaty of Guarantee, 1960;

(b) Article 50 of the Constitution of Cyprus, 1960; and/or

(c) Article 170 of the Constitution.

In our opinion, the answer is: yes. The Republic of Cyprus is eligible to become a member of the EU. In particular:

- Article 1 paragraph 2 of the Treaty of Guarantee does not prohibit Cyprus from becoming a member of a regional organisation such as the European Union. Membership of the EU would not constitute participation "in any political or economic union with any State whatsoever" within the meaning of Article 1 paragraph 2.
- As to Article 50 of the Constitution, there is no person now filling the role of Vice-President, and the provisions dealing with the powers of the Vice President are in abeyance. Thus the Vice-Presidential veto provided for in Article 50 cannot be exercised. In any event the accession of Cyprus would not involve, in present circumstances, a "manifest" breach of internal law within the meaning of Article 46 of the Vienna Convention on the Law of Treaties, and thus it could not subsequently be invoked by Cyprus as a basis for invalidating its consent to be bound by the EU treaties.
- Article 170 provides for most-favoured nation treatment to be extended by Cyprus to the three guarantor states "for all agreements whatever their nature may be". Such treatment has only to be extended "by agreement on appropriate terms". In common with other most-favoured-nation clauses, Article 170 does not prohibit Cyprus from entering into agreements which confer benefits on third states; it envisages that benefits extended to the most-favoured-nation will also be extended to each of the guarantors. Thus Article 170 does not prohibit Cyprus from acceding to any agreement whatever. In fact, EC membership is not regarded as triggering general mfn obligations, under the GATT or otherwise. Turkey as a GATT contracting party and applicant for EU membership is well aware of this practice. Both Turkey and Greece, in bilateral treaties concluded with Cyprus after independence, have recognised that mfn obligations in respect of trade in products do not apply "to privileges... preferences or concessions... granted... in the future to other countries on account of... participation, entry or association... [to] a customs union, a free trade area or an economic community". For these reasons Article 170 would not require Cyprus to extend any additional benefits of EU membership to Turkey.

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* The present annex is being reproduced as received, in the languages of submission.

The Status of the Republic of Cyprus

2. An initial point to be noted is that the Republic of Cyprus is recognised as an independent state, including by all existing members of the EU. The Government of Cyprus, based in Nicosia, is equally regarded as the government of the Republic, with the normal competence and authority to represent the state. This is so notwithstanding the constitutional difficulties that have occurred in Cyprus since 1963, and the *de facto* division of the island following the Turkish invasion in 1974.[1]

3. By contrast, no other entity within Cyprus is recognised as a state, as the government of a state, or as having any degree of separate legal status or personality on the international plane. The "Turkish Republic of Northern Cyprus", the entity created in the north of the island following the events of 1974, is recognized only by Turkey. The lack of international status of the "Turkish Republic of Northern Cyprus" has been consistently reaffirmed by the Security Council[2] as well as by the General Assembly,[3] and by the European Court of Human Rights,[4] the European Court of Justice,[5] and national courts.[6] For example in a case concerning the 1977 Protocol to the 1972 Association Agreement between the EC and Cyprus, the European Court of Justice said:

> "While the *de facto* partition of the territory of Cyprus, as a result of the intervention of the Turkish armed forces in 1974, into a zone where the authorities of the Republic of Cyprus continue fully to exercise their powers and a zone where they cannot in fact do so raises problems that are difficult to resolve in connection with the application of the Association agreement to the whole of Cyprus, that does not warrant a departure from the clear, precise and unconditional provisions of the 1977 Protocol on the origin of products and administrative cooperation... Article 5 cannot in any event confer on the Community the right to interfere in the internal affairs of Cyprus. The problems resulting from the de facto partition of the island must be resolved exclusively by the Republic of Cyprus, which alone is internationally recognized."[7]

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[1] Amongst numerous statements to this effect see SC Res 367 (1975), para 1; Report of the Secretary-General on his Mission of Good Offices in Cyprus, S/23121, 8 October 1991, paras 18-20.

[2] See esp SC Resns 541 (1983), 550 (1985). For the more recent resolutions see below, para 23.

[3] See GA Res 37/253, 16 May 1983.

[4] See most recently *Loizidou v Turkey (Preliminary Objections)* ECHR Ser A vol 310 (1995) 18; *Loizidou v Turkey (Merits)* (1996) 108 ILR 443, paras 19-23, 42-6, 56, with references to earlier decisions of the Commission and the Council.

[5] *R v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd* [1994] ECR I-3087; 100 ILR 258.

[6] In the UK see *Hesperides Hotels Ltd v Aegean Turkish Holidays Ltd* [1979] AC 508, 73 ILR 9; *R v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd* (1994) 100 ILR 244; *Polly Peck International plc v Nadir (No 2)* [1992] 4 All ER 769, 773; *Caglar v Billingham* [1996] STC (SCD) 152, 108 ILR 510.

[7] *R v Minister of Agriculture, Fisheries and Food, ex parte SP Anastasiou (Pissouri) Ltd* [1994] ECR I-3087, 3131, 3133-4; 100 ILR 258, 297-9.

4. Against this background we turn to consider the three provisions which, it is said, prevent Cyprus from becoming a member of the EU, or at any rate from doing so before Turkey also becomes a member.[8]

Article I paragraph 2 of the Treaty of Guarantee

5. The Treaty of Guarantee of 16 August 1960 was concluded between Cyprus on the one part and the three guarantors, Greece, Turkey and the United Kingdom on the other part, on the day Cyprus became independent.[9] Article I of the Treaty provides:

> "The Republic of Cyprus undertakes to ensure the maintenance of its independence, territorial integrity and security, as well as respect for its Constitution.
>
> It undertakes not to participate, in whole or in part, in any political or economic union with any State whatsoever. It accordingly declares prohibited any activity likely to promote, directly or indirectly, either union with any other State or partition of the Island."

By Article II, the three guarantor states "taking note of the undertakings of the Republic of Cyprus set out in Article I... recognise and guarantee the independence, territorial integrity and security of the Republic of Cyprus, and also the state of affairs established by the Basic Articles of its Constitution."

6. We note that at different stages questions have been raised as to the interpretation, continuing validity or legal effect of the Treaty of Guarantee. Such issues only need to be considered if the provisions of the Treaty would be infringed by Cyprus's accession to the EC. For the reasons given here this is not the case.[10]

7. One point is, however, crucial to the interpretation of Article 1 paragraph 2 of the Treaty. That provision embodies an unconditional and permanent prohibition upon partition or union with any state. It is not limited to cases of union through membership of organisations or participation in treaties to which Greece and Turkey are not members or parties. Accordingly, if Article 1 paragraph 2 is interpreted as prohibiting Cyprus from becoming a member of the EU, that prohibition is permanent and unconditional. It has nothing to do with the question whether or when Turkey may become a member of the EU.

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[8] In dealing with these arguments, we will also deal, to the extent they are relevant, with the positions contained in an "Opinion of Professor M.H. Mendelson QC on the Application of the Republic of Cyprus to Join the European Union", 6 June 1997 with a supplementary note of 21 July 1997. We have not thought it necessary to discuss the many factual assertions in that Opinion which are not relevant to the legal issue of eligibility. We note that most of these assertions are based on ZM Necatgil, *The Cyprus Question and the Turkish Position in International Law* (2nd edn, 1996), a work of doubtful objectivity since the author was "Attorney-General of the Turkish Republic of Northern Cyprus". We append a select bibliography of the literature dealing with the Cyprus conflict, to which we have referred in producing this Opinion.

[9] UKTS 1961 No 5; 164 BFSP 388.

[10] Nor have we dealt with any of the policy issues that need to be resolved in the accession negotiations; these are a matter for discussion between the EU and Cyprus.

8. The immediate precursor of Article 1 paragraph 2 was Point 22 of the "Basic Structure of the Republic of Cyprus", initialled by the Greek and Turkish Prime Ministers at Zurich on 11 February 1959. Point 22 provided:

> "It shall be recognised that the total or partial union of Cyprus with any other State, or a separatist independence for Cyprus (i.e., the partition of Cyprus into two independent States), shall be excluded."[11]

The purpose of Point 22 was to exclude both *Enosis* and *Taksim* - union of Cyprus with Greece, or division of the island leading to the union, or close association, of one part with Greece and the other with Turkey. These were the avowed aims of the two communities during the 1950s: the compromise underlying the Zurich and London Accords of 1959 involved the abandonment of both. But the question is whether Article 1 paragraph 2 of the Treaty of Guarantee also had the effect of preventing Cyprus from ever becoming a party to a supranational regional economic agreement such as the EEC (now the EU).

The interpretation of Article 1 paragraph 2

9. To answer that question it is necessary to apply the international law rules of the interpretation of treaties. These are authoritatively set out in Articles 31-33 of the Vienna Convention on the Law of Treaties of 1969,[12] which relevantly provide as follows:

> Article 31 *General rule of interpretation*
>
> 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.
>
> 3. There shall be taken into account, together with the context...
>
> (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation...
>
> Article 32 *Supplementary means of interpretation*
>
> Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:
>
> (a) leaves the meaning ambiguous or obscure; or
>
> (b) leads to a result which is manifestly absurd or unreasonable.

Thus the first step in any process of treaty interpretation is to consider the actual language of the treaty provision in its context and in the light of its object and purpose.

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[11] Text in: *Conference on Cyprus. Documents signed and initialled at Lancaster House on February 19, 1959* (Cmnd 679) p 9; also 164 BFSP 219.

[12] 1155 UNTS 331. As at 31 December 1995 the Convention had 77 parties, including Cyprus, Greece and the United Kingdom, but not Turkey. By reason of Art 4 the Vienna Convention is not in force as such in relation to the Treaty of Guarantee, but many of its provisions, including Arts 31-33, are considered to reflect general international law. Cf *Re the Draft Treaty on a European Economic Area (No 1)* (Opinion 1/91) [1991] ECR I-6079, 6101; 100 ILR 165, 186; ICJ, *Case concerning the Gabcikovo-Nagymaros Project (Hungary v Slovakia)*, Judgment, 25 September 1997, para 47.

The ordinary meaning of Article I paragraph 2

10. The second paragraph of Article I consists of two sentences. The first contains a commitment by Cyprus itself "not to participate, in whole or in part, in any political or economic union with any State whatsoever". The second declares that any activities likely "to promote, directly or indirectly, either union with any other State or partition of the Island" are prohibited. This is evidently aimed, *inter alia*, at popular agitation in favour of *enosis* or partition, and thus extends beyond the actions of the Government of Cyprus itself.

11. It should first be noted that the term "State" in Article I is in the singular.[13] Moreover it is legitimate to take as the context of paragraph 2 the Constitution itself, to which paragraph 1 refers. Article 50 of the Constitution refers to "international organisations and pacts of alliance". Article 169 of the Constitution refers to "international agreements with a foreign State or any International Organisation relating to commercial matters, economic co-operation... and *modus vivendi*". Article I paragraph 2 of the Treaty of Guarantee thus proceeds on the basis of a distinction between a "political or economic union with any State", on the one hand, and "international organisations and pacts of alliance", or economic cooperation agreements, on the other hand. It is true that a "political or economic union with any State" could be initiated by a treaty. But what is prohibited by Article I paragraph 2 is union with *another* state, not cooperation with a group of states in establishing a supranational organization of a political and/or economic character.

12. It should be noted that from the earliest development of international organisations in the 19th century, the term "union" was quite often used.[14] Examples include, at the universal level, the International Telecommunications Union (1865) and the Universal Postal Union (so titled from 1878) and, at the regional level, the Western European Union (1954). Cognate terms such as "unity" and "united" are also often used, either in the title of the organisation, as in the Organisation of African Unity, or in terms of its purposes, as with Article I of the Statute of the Council of Europe.[15] But a distinction has always been drawn between membership of multilateral or plurilateral organisations of states (whatever their title), and the political or economic union of one state with another state.

13. That distinction holds for the European Union. It is not necessary for present purposes exhaustively to analyse the European Union as it currently exists under the Treaty on European Union of 7 February 1992 (the Maastricht Treaty), or as it will become following the 1997 Intergovernmental Conference.[16] Despite the continuing evolution of the EU, the position is clear enough. For example, the German Federal Constitutional Court has

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[13] So also Art 185 (2) of the 1960 Constitution, which provides that "The integral or partial union of Cyprus with any other State or the separatist independence is excluded."

[14] Cf C Parry, *Encyclopaedic Dictionary of International Law* (1984) 411.

[15] 87 UNTS 103. The French text of Art I states that the aim of the Council is "de réaliser une union plus étroite entre ses Membres"; the English text speaks of "a greater unity between its Members". As far as we are aware, no objection was raised to Cyprus' membership of the Council of Europe, even during the period (1969-1974) when Greece was not a member.

[16] See Conference of the Representatives of the Governments of the Member States, Draft Treaty of Amsterdam, Brussels, 19 June 1997: CONF/4001/97. For example Art F para 3 provides that "The Union shall respect the national identities of its Member States."

described the EU as "a supranational organization, which is separate from the State authority of the Member States",[17] a "supranational system of competences".[18] According to the Court, the Maastricht Treaty...

> "establishes a European Union of States which is to be borne by the Member States and respects their national identity. It relates to Germany's membership of supranational organizations, not membership of a European State... The exercise of sovereign authority by a union of States such as the European Union is based on powers conferred by States which remain sovereign and which, at international level, always act through their governments and thereby control the process of integration."[19]

A similar point is expressed by Article 88-1 of the French Constitution, which describes the EC and the EU as "established by States having freely chosen, pursuant to the constitutive treaties of those entities, to exercise certain of their powers in common". The French Constitutional Council had described the EU as "an independent legal order which, although integrated into the legal systems of the different Member states of the Communities, does not form part of the institutional order of the French Republic".[20] This recalls the well-known description of the EEC, given by the European Court of Justice in 1964, as a distinct "legal system which... became an integral part of the legal systems of the Member States".[21] The European Court has never suggested that the legal system of each member state has become an integral part of the legal systems of the other members.

14. Rather, what each of the descriptions quoted in the previous paragraph seeks to convey is that, although the EU is a distinct community with its own legal system and an existence separate from that of its member states, and although it aspires to a "more perfect union", it is a legal system of a transnational character in which each member state participates.[22] The member states have transferred certain defined elements of governmental authority to the EU, not to each other. The law of the EU is part of the laws of the member states, but the laws of the member states remain distinct from each other, each controlled by its own constitutional system. The EU is not a state, and it is inaccurate to describe any individual member state as economically or politically in union with other individual member states. In the language of the French Constitutional Council, no member state "forms part of

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[17] *Maastricht Treaty Constitutionality Case* (1993) 98 ILR 196, 216.

[18] Ibid, 217.

[19] Ibid, 221, 223, 225. See further I Winkelmann, *Das Maastricht-Urteil des Bundesverfassungsgerichts vom 12. Oktober 1993* (Duncker & Humbolt, Berlin, 1994), p 752.

[20] Conseil constitutionnel, Décision n° 92-308 DC du 9 avril 1992, *Traité sur l'Union européenne, Recueil des décisions* 1992, 55, 62 (para 34), reprinted in (1992) 93 ILR 338, 347. The Council held that in certain respects French ratification of the Maastricht Treaty required a constitutional amendment. The proposed amendment was held to be constitutional in Conseil constitutionnel, Décision n° 92-312 DC du 2 septembre 1992, *Traité sur l'Union européenne, Recueil des décisions* 1992, 76, reprinted in (1992) 98 ILR 180, and was subsequently approved at a referendum.

[21] *Costa v Ente Nazionale Energia Elettrica* (Case 6/64) (1964) ECR 585, 593; 93 ILR 38. Cf *Re the Draft Treaty on a European Economic Area (No 1)* (Opinion 1/91) [1991] ECR I-6079, 6102; 100 ILR 165, 187.

[22] It is worth recalling that the Council of Europe too provides for "a greater unity" ("une union plus étroite") between its Members: see note 15 above.

the institutional order" of any other member state. Rather they are all linked in and through the community of the EU.[23]

15. This is a very different situation than the one envisaged and prohibited by Article 1 paragraph 2 of the Treaty of Guarantee, which was concerned to prevent Cyprus, or any part of Cyprus, becoming united with another particular state. In fact, of course, the concern was to prevent any form of political or economic union with either Greece or Turkey. As Professor Lavroff put it at the time: "On voit bien ici que la raison d'être des accords du 19 février 1959 est de couper court aux prétentions émises par la Grèce et la Turquie..."[24] Although for form's sake these two states were not mentioned, it was precisely the formation of a statal union with either, in whole or in part, that was excluded. It was such a union which the two communities unsuccessfully sought to achieve in the conflicts of the 1950s. On the basis of the ordinary meaning to be given to the first sentence of Article 1 paragraph 2 in its context and in the light of its object and purpose, membership of the EU does not involve "political or economic union with any State".

16. It might be argued that the effect of EU membership is *indirectly* to promote union with any State, in that Cyprus by reason of its small size and population would inevitably tend to be dominated *indirectly* by other member states through the medium of the EU, and that this is contrary to the second sentence of paragraph 2.[25] The simple answer, however, is that the prohibited result under *both* sentences of paragraph 2 is "union with any other State or partition of the Island". The position in the EU, both formally and in substance, is that the member states exercise collective control over the institutions of the EU, which in turn generates the rules and policies which member states must apply. There is no analogy whatever to the situation described by Judge Anzilotti in his decisive opinion in the *Austro-German Customs Union* case, where...

> "In view of the great disproportion in the economic strengths of Germany and Austria... Austria's economic life would sooner or later become dependent upon Germany's... and its effect would therefore be to conform and strengthen the movement towards the incorporation of Austria within a single big German State".[26]

By contrast, Cyprus as a member of an organisation such as the European Union with between 15 and 21 members would be *less* dependent on any single state.

Subsequent practice in the application of Article 1 paragraph 2

17. Under Article 31 (3) (b) of the Vienna Convention, the subsequent practice of the parties to a treaty is to be taken into account if it establishes their agreement as to the

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[23] By the same token EU citizenship is an additional citizenship conferred by the Maastricht Treaty on the citizens of member states. Each member state continues to determine who are its citizens; EU citizenship is complementary. Moreover, although citizens of EU member states possess certain rights by virtue of their EU citizenship, they do not thereby become citizens of other EU states. Thus, for example, German citizenship remains quite distinct from Greek citizenship, and *vice versa*.

[24] DG Lavroff, "Le statut de Chypre" (1961) 67 *RGDIP* 544; see also G Ténékidès, *Chypre. Histoire récente et perspectives d'avenir* (Nagel, Paris, 1964) 123.

[25] This argument is briefly made in the Mendelson Opinion, 36-7.

[26] PCIJ Ser A/B No 41 (1931) at 71-2. See further below, para 23.

interpretation of the treaty. Subsequent practice in the application of the Treaty of Guarantee suggests that it has not been regarded by the parties as preventing Cyprus from entering into treaties for closer economic and political relations with groups of states. Perhaps the best example is the Association Agreement between the EEC and Cyprus, signed at Brussels on 19 December 1972.[27] The Agreement envisages a customs union between Cyprus and the EEC (Article 2 (3)), and adopts a principle of non-discrimination as between nationals or companies of member states, and also as between nationals or companies of Cyprus (Article 5). Objections to the conclusion of the Agreement were made in 1972 from the Turkish Cypriot side, but the EEC disregarded these on the ground that they were internal matters for Cyprus.[28] Turkey for its part expressed concern over the possibility of discrimination against the Turkish community in Cyprus, a concern addressed by Article 5 of the Agreement. Neither the United Kingdom nor Turkey argued that the conclusion of the Association Agreement was a breach of Article 1 paragraph 2 of the Treaty of Guarantee: no-one suggested that the Agreement indirectly created or envisaged an economic union with any existing member of the EEC.[29] This example is all the more significant in that, as Professor Toulemon put it, such an association is a "stage vers l'adhésion", a probationary step in the direction of membership.[30]

The travaux préparatoires of Article 1 paragraph 2

18. Under Article 32 of the Vienna Convention, regard can always be had to the *travaux préparatoires* of a treaty in order to confirm its interpretation. In fact, agreement on Point 22, the precursor of Article 1 paragraph 2, was reached by the Greek and Turkish Foreign Ministers at Zurich on 11 February 1959, and was subsequently confirmed in discussions with the British Government. The two Foreign Ministers reported their agreement to the British Foreign Secretary on 12 February 1959, at which meeting the following exchange took place:

> "The Secretary of State... turned to the Zürich documents beginning with the Treaty of Guarantee. Was the second paragraph of Article 1 intended to preclude Cypriot membership of all international associations, as for example the Free Trade Area if that ever came into existence.
> *M. Zorlu* explained that the paragraph was intended to prohibit partition and Enosis (whether with Greece or with any other country). *M. Averoff* agreed; he explained that the wording was specifically designed to exclude possible Greek devices in the direction of Enosis, such as a personal union of Cyprus and Greece under the Greek Crown. *M. Zorlu* and *M. Averoff* both made it clear that there would be no objection to Cypriot membership of international associations of which both Greece and Turkey were members; e.g., the Postal Union, and any Free Trade Area. Nor did they exclude either Commonwealth membership

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[27] *OJEC* No L 133/1 (1973). There have been 6 amendments to the Agreement, most recently in 1987 (*OJEC* No L 393/13 (1987)) and 1995 (*OJEC* No L 278 (1995)). The 1987 Protocol initiated the second stage of association, with a view to a complete customs union within 15 years (Art 31).

[28] See above, para 3.

[29] The Turkish objections in 1972 are summarized in *Europe* No 986, 16 February 1972. They do not rely on Article 1 of the Treaty of Guarantee.

[30] R Toulemon, "L'association à la Communauté économique est-elle une formule d'avenir?" (1967) No 100 *Revue du Marché Commun* 150.

> for Cyprus or membership of the Sterling Area. They would, indeed, welcome Commonwealth membership... Article 1 of the Treaty of Guarantee could be amended if necessary to make clear that neither Commonwealth nor Sterling Area membership were excluded. But the final decision on such membership would, of course, rest with the Cypriots themselves."[31]

Evidently the Foreign Secretary accepted this explanation, and no amendment to Article 1 was found necessary.[32]

19. The matter was raised again in the London Joint Committee on Cyprus on 19 October 1959. The Committee, which consisted of Greek Cypriot and Turkish Cypriot representatives as well as representatives of the United Kingdom, Greece and Turkey, was responsible for finalizing the various texts in accordance with the provisions agreed on by the three states at Zurich and London. At the 26th meeting of the Committee, the following exchange took place between the British chairman and the senior Greek Cypriot representative:

> "SIR KNOX HELM then asked if, apart from the proposed Article V Mr Rossides accepted the draft text.
> MR ROSSIDES replied affirmatively. He then asked the meaning of Article I paragraph 2. He presumed it referred to union with Greece or Turkey, but it seemed rather sweeping, as he supposed that Cyprus could for instance join an economic organisation or the Commonwealth.
> SIR KNOX HELM observed that that was coming near to re-examining the wording of the Treaty, and that it was perhaps better not to start to try to interpret the various Articles.
> M. ROUMOS said he thought they could all assure Mr. Rossides and put on record that it was certainly not intended that Cyprus should be precluded from membership of the Free Trade Area or multilateral organisations. What was meant was that Cyprus should not be politically united with Greece or Turkey, or even economically in the narrow sense of customs union; but that could not really be said in a Treaty.
> M. BAYULKEN confirmed that the wording did not refer to any international organisations, such as F.A.O., G.A.T.T., etc.
> MR. ROSSIDES thanked M. Roumos and M. Bayulken for their explanation, and then said that he must reply to Sir Knox Helm's remark that he was trying to open discussion of the Treaty. When starting, he had said that he did not dispute it, and had asked for elucidation... His Delegation had received a

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[31] "Record of a Meeting Held at the Foreign Office at 4 p.m. on Thursday, February 12, 1959", FO 371/144640, p 2. The reference in this passage to "membership of international associations of which both Greece and Turkey were members" was evidently illustrative, not exclusive; in the next sentence the two spokesmen went on to refer to the Commonwealth and the Sterling Area, yet Greece and Turkey have never been a member of either. In fact none of the texts limit Cyprus to membership of organisations of which both Greece and Turkey are members.

[32] By contrast an additional article (Art 3) was added to the Treaty of Guarantee following the meeting of 12 February 1959 to ensure that the British bases in Cyprus were accepted and guaranteed by both Greece and Turkey: FO 371/144640, p 3.

constructive reply from the Greeks and Turks and had thought it proper to raise the issue."[33]

20. Thus the Greek and Turkish negotiators of the Treaty assured first the British Government and subsequently the Cypriot representatives that Article 1 paragraph 2 of the Treaty of Guarantee would not prevent Cyprus becoming a party to international organizations including free trade areas, common currency areas, etc. Its concern was to prevent the two rival aims for which the opposing forces in Cyprus had been fighting during the 1950s, *enosis* or partition leading to *de facto* union with another state, together with any indirect form of arrangement which might achieve the same end, such as a "narrow... customs union" with Greece or Turkey. The *travaux* of Article 1 paragraph 2 confirm that it means exactly what it says, that the use of the singular term "State" is deliberate, and that it is not addressed at international organisations such as the EU.

The attitude of the international community to the Cyprus application for membership

21. This interpretation has also received support from the international community more widely. Cyprus applied for EC membership on 3 July 1990. In its opinion on the application, the European Commission stated:

> "When presenting its application for accession, the Government of the Republic of Cyprus, recognized by the European Community and its Member States as the only legitimate government representing the Cypriot people, addressed the Community on behalf of the whole of the island. The application was strongly challenged by the de facto authorities of the northern part of the island. While acknowledging that it would be in the interest of the Turkish Cypriot community to form part of the European Community, these authorities rejected the right of the Government of the Republic of Cyprus to speak for the whole of Cyprus in such an approach. They based their position on the Guarantee Treaty and the wording of the 1960 Constitution, which grants the President and Vice-President (a Turkish Cypriot) a veto over any foreign policy decision, particularly any decision on joining an international organization or alliance that does not count both Greece and Turkey among its members. They consider, accordingly, that in the prevailing circumstances the Community should not take any on the application. The Community, however, following the logic of its established position, which is consistent with that of the United Nations where the legitimacy of the Government of the Republic of Cyprus and non-recognition of the 'Turkish Republic of Northern Cyprus' are concerned, felt that the application was admissible and initiated the procedures laid down by the Treaties in order to examine it."[34]

The Commission went on to deal with economic and other issues relating to possible accession, reaching a broadly favourable conclusion. For present purposes, however, what matters is that the Commission confirmed, and member states subsequently endorsed, the

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[33] London Committee on Cyprus, Corrected Minutes of the 26th Meeting of the Committee of Deputies, LC (MD), 19 October 1959, p 6.

[34] Commission of the European Communities, *The challenge of enlargement. Commission opinion on the application by the Republic of Cyprus for membership* (*OJEC* Supp 5/93) 7-8.

view that Cyprus is "eligible for membership".[35] That view has since been strongly reaffirmed.[36]

22. The EU's attitude cannot be explained on the basis that from its point of view Cyprus's accession to the EU would prevail over its treaty obligations to a third state, Turkey. On the contrary the EU has been careful to preserve existing treaty rights and obligations, as is shown by Article 234 of the EC Treaty, which expressly preserves such rights and obligations. This concern has been taken fully into consideration in the subsequent adhesion treaties,[37] and it is fully consistent with the law of treaties.[38] The EU's position is, evidently, that Cyprus is not prohibited by its existing treaty obligations either from association with or membership of the Union.

23. Reference may also be made to the position of the United Nations, as expressed by the Security Council in its consideration of the Cyprus question since 1990. The most recent resolution of the Security Council on Cyprus contains the following paragraphs:

> "11. *Reaffirms* its position that a Cyprus settlement must be based on a State of Cyprus with a single sovereignty and international personality and a single citizenship, with its independence and territorial integrity safeguarded, and comprising two politically equal communities as described in the relevant Security Council resolutions, in a bi-communal and bi-zonal federation, and that such a settlement must exclude union in whole or in part with any other country or any form of partition or secession...
>
> 14. *Reaffirms* that the decision of the European Union concerning the opening of accession negotiations with Cyprus is an important development that should facilitate an overall settlement."[39]

These paragraphs also occur in earlier resolutions. The first paragraph has been repeated in successive resolutions since 1990;[40] the second was also contained in SC Resolution 1092 of 23 December 1996. The conjunction of the two paragraphs makes it quite clear that the Security Council regards the accession of Cyprus to the EU as plainly consistent with a renewed commitment to avoid "union in whole or in part with any other country".

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[35] Id. 17. It should be noted that the Turkish Cypriot views referred to in the Commission's Opinion are inconsistent with the view that Art 1 paragraph 2 of the Treaty of Guarantee precludes EU membership. As pointed out above (para 7), Art 1 paragraph 2 is an unconditional prohibition; it is irrelevant whether Greece or Turkey are parties to the political or economic union in question.

[36] See Communication from the Commission to the Council on Reconsideration of the Question of Cyprus's Accession to the European Union, CAB XI/9/95-EN Rev.2 (1995); Council Decision, 6 March 1995; EU-Cyprus Association Council, Common Resolution on the Establishment of a Structured Dialogue between the European Union and Cyprus and certain elements of the strategy to prepare for Cyprus's Accession to the European Union, 12 June 1995; Resolution of the European Parliament, 12 July 1995.

[37] See e.g. Protocol No 17 to the Treaty of Adhesion of Denmark, Ireland and the United Kingdom, 22 January 1972, preserving the Commonwealth Agreement on Sugar.

[38] See Vienna Convention on the Law of Treaties, Art 30 (4).

[39] Security Council Res 1117 (1997), 27 June 1997.

[40] SC Resns 649 (1990), para 1; 716 (1991), para 3; 774 (1992), para 2; 939 (1994), para 2; 1092 (1996), para 14.

24. The question of the accession of Cyprus to the EU has common features, from a legal point of view, with the earlier question of the accession of Austria.[41] Under Article 4 (1) of the Austrian State Treaty of 1955, Austria undertook not to "enter into political or economic union with Germany in any form whatever". Article 4 paragraph 2 amplified that guarantee against another *Anschluss*, in the following terms:

> "In order to prevent such union Austria shall not conclude any agreement with Germany, nor do any measures likely, directly or indirectly, to promote political or economic union with Germany, or to impair its territorial integrity or political or economic independence. Austria further undertakes to prevent within its territory any act likely, directly or indirectly, to promote such union and shall prevent the existence, resurgence and activities of any organizations having as their aim political or economic union with Germany, and pan-German propaganda in favour of union with Germany."[42]

25. Although the matter was discussed following Austria's application in 1989 for EC membership, the view taken was that membership was in no way inconsistent with Article 4 paragraph 2 of the State Treaty. Of the parties to the State Treaty, the USSR initially objected to EU membership, but it did so primarily because EU membership was inconsistent with Austrian neutrality, a subject deliberately not dealt with in the State Treaty.[43] As to the issue of indirect union with Germany, the position of the Austrian Government was that Article 4 was "irrelevant".[44] The EC Commission evidently agreed: in its lengthy report on the Austrian application, it too regarded the State Treaty as irrelevant and focussed exclusively on the issue of neutrality.[45]

26. Austrian and foreign commentators equally dismissed the argument. For example, Lernhardt wrote that Article 4...

> "clearly refers to the bilateral relationship between Austria and Germany. Membership in an association of states could at best be affected by the article if

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[41] The close parallel between the two cases has been noted in the literature: see JH Wolfe, (1984) 76 *Proc ASIL* 111.

[42] UNTS No 2949 (1955). Art 4 is even more detailed and explicit than were Art 88 of the Treaty of St Germain of 1919, or Geneva Protocol No I of 4 October 1922, which were the subject of the decision of the Permanent Court of International Justice in the *Austro-German Customs Union Case* PCIJ Ser A/B No 41 (1931). The majority judgment in that case concluded that the customs union constituted a "special regime" granting "exclusive advantages calculated to threaten [Austria's] independence" contrary to the Protocol of 1922 (at p 52). Judge Anzilotti, who made up the slender majority in that case, disagreed. In his separate opinion he expressed the view that it was the fact of entering into an exclusive union with Germany (as distinct from some other state or states) which constituted the actual threat to Austrian independence, having regard to the strong political movement for *Anschluss*: at pp 68-72.

[43] Cyprus is under no equivalent obligation of neutrality, under the Treaty of Guarantee or otherwise.

[44] See the Government's Report to Parliament (III-113 *Beilagen zu den Stenographischen Protokollen des Nationalrats* XVII GP, para 3.2, reprinted in *Economy Extra*, May 1989, 19). The Government further stated that the European Union did not affect the existence of the Republic of Austria as a democratic and federal State based on the rule of law: *1600 der Beilagen zu den Stenographischen Protokollen des Nationalrats* XVIII GP, 21.

[45] Sec/91/1590 Final, 1 August 1991, summarised in *Bull EC* 7/8-1991, 81.

> this association were entirely dominated by Germany. In the EC, Germany is only one of twelve member-states, without coming even closely to having a majority of votes. With complete justification each of the present EC members would strictly reject any interpretation of its accession as '*Anschluss* with Germany'."[46]

As early as 1963, Ermacora came to the conclusion that the accession to the EEC would not contradict Article 4 of the State Treaty: in his view the prohibition of "*Anschluß*" related to union with a state, not to a supranational community.[47] Similar conclusions were drawn by Seidl-Hohenveldern with regard to the proposed association agreement.[48] On the question whether EU membership would amount *indirectly* to union with Germany, the question was whether German influence or control over the EEC (now EU) amounted to domination, so as to produce indirectly what Article 4 directly prohibited. Again, the unanimous answer was that it would not:[49] on the contrary, the exclusion of Austria from the Common Market, it was concluded, would weaken the economic survival capacity of Austria and, consequently, undermine the objective of Article 4 (2) of the State Treaty.[50] In the event, Austria was admitted to the EU in 1994, without Russian objection and with no amendment having been made to Article 4 of the State Treaty.[51]

27. Similar conclusions apply to the question of the compatibility of an accession of the Republic of Cyprus to the EU. No single Member State of the EU has or claims to have such an influence in either a formal or a material sense over the decision-making procedure of the EU that it could be seen as dominating the EU. Hence, accession of the Republic of Cyprus to the European Union cannot be qualified as an "economic or political union with any State whatsoever".

Article 50 of the 1960 Constitution

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[46] A Lernhardt, *Austria and the European Community. A Guide to Orientation* (trans I Mansfield, Vienna, 1985) 18-19.

[47] F Ermacora, Akademische Vereinigung für Außenpolitik, Universität Innsbruck, *Österreich und die EWG. Das Salzburger Expertengespräch* (1963) 1-58.

[48] I Seidl-Hohenveldern, *Österreich und die EWG* (1963) 142. Similarly J Azizi, "Verfassungsrechtliche Aspekte eines österreichischen EG-Beitritts" in Glatz & Moser (eds), *Herausforderung EG Binnenmarkt* (1989) 267. And see also I Seidl-Hohenveldern, "La neutralité autrichienne et les relations de l'Autriche avec les Communautés européennes" [1963] *Annuaire français de droit international* 826; I Seidl-Hohenveldern, "Österreich und die EWG" (1968) 14 *Jahrbuch für Internationales Recht* 128, 141-3; H Schneider, *Alleingang nach Brüssel. Österreichs EG-Politik* (Europa Union Verlag, Bonn, 1990) 250-1; D Kennedy & L Specht, "Austrian Membership in the European Communities" (1990) 31 *Harvard ILJ* 407.

[49] See e.g. HF Köck, *Ist ein EWG-Beitritt Österreichs zulässig?* (Orac, Vienna, 1987) 14; see also Azizi (1989) 270.

[50] The practice of the various parties to the State Treaty supported these conclusions. No objections were made when Austria and Germany both became members of economic and political international organizations such as GATT or OECD, or when Austria concluded the Free Trade Agreement with the EEC in 1972 (BGBl. Nr. 466/1972; Azizi (1989) 268).

[51] In a Supplementary Note of 21 July 1997, Professor Mendelson seeks to explain the Austrian case by arguing that the Soviet Union consented to release Austria from the constraints of Article 4 of the State Treaty on entry into the EU. This ignores the fact that neither the Soviet Union, nor any other state, suggested at the time that Art IV prevented Austria's entry, notwithstanding that the possibility was expressly considered, and dismissed, in the literature. The Soviet Union was concerned with Austrian neutrality, not with Art IV.

28. We turn to the arguments relating to the Constitution of 1960. Article 50 of the Constitution provides, in part, as follows:

> "1. The President and the Vice-President of the Republic, separately or conjointly, shall have the right of final veto on any law or decision of the House of Representatives or any part thereof concerning-
>
> (a) foreign affairs, except the participation of the Republic in international organisations and pacts of alliance in which the Kingdom of Greece and the Republic of Turkey both participate...
>
> 2. The above right of veto may be exercised either against the whole of a law or decision or against any part thereof, and in the latter case such law or decision shall be returned to the House of Representatives for a decision whether the remaining part thereof will be submitted, under the relevant provisions of this Constitution, for promulgation."

Article 50 defines "foreign affairs" broadly, including "the conclusion of international treaties, conventions and agreements". Under Articles 50 (3) and 52, the right of veto must be exercised within 15 days of the transmission of the law or decision.[52]

29. As a matter of form, we note that Article 50 does not allow the President or Vice-President to veto a law or decision in advance of its consideration by the House of Representatives. More important, however, are certain matters of fact. The first Vice-President of the Republic was Mr Kutchuk, who was elected under Article 39 of the Constitution in December 1959. There has never been another election for the Vice-Presidency.[53] From 1963 constitutional difficulties arose, and the Turkish Cypriot office holders under the Constitution progressively withdrew from participation. Moreover since the Turkish invasion of 1974 the leadership of the Turkish Cypriot community has been seeking the partition of Cyprus and the establishment of a separate Turkish Cypriot state.[54] Accordingly the position in fact is that the provisions of the 1960 Constitution dealing with the Vice-Presidency, as with other provisions for Turkish Cypriot representation in the Government of Cyprus, are presently inoperative. Despite this, as we have noted, the international community continues to recognise that the Government of Cyprus has the normal capacity to represent Cyprus and to conduct its foreign affairs.

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[52] These provisions give effect to Point 8 of the "Basic Structure of the Republic of Cyprus" of 1959. Art 57 (3) of the Constitution also gives a veto in relation to decisions of the Council of Ministers on these matters, to be exercised within 4 days.

[53] Under Art 43, the President and Vice-President have a 5 year term, but they continue to hold office "until the next elected President and Vice-President are invested". Under Art 44, their office becomes vacant on death, resignation or "(d) upon... such absence, other than temporary, as would prevent him to perform effectively his duties". Mr Kutchuk ceased to perform his duties in 1963, and died in 1984. Thus there is no longer a person holding the office of Vice-President.

[54] For our purposes it is not necessary to take sides on the controversies that arose between the two communities over constitutional issues in the period before 1974 (but cf Mendelson Opinion, 39 where a different approach is taken). It is sufficient to note the facts that (a) there is currently no Vice-President; (b) the present leadership of the Turkish Cypriot community is seeking partition and independence, contrary to the Constitution and the Treaty of Guarantee.

30. The question is whether, in these circumstances, Cyprus is prevented from validly acceding to the EU. The answer, in our opinion, is clearly no. Article 50 of the Constitution recognises that Cyprus has the normal capacity of a state to enter into "international treaties, conventions and agreements" and to become a member of all kinds of international organizations and alliances. It provides a procedural veto on such decisions, the veto to be cast by a Vice-President elected and effectively performing his functions under the Constitution. In the absence of a veto duly cast in accordance with Article 50, the decision to accede is valid and effective.

31. Reference should be made here to Articles 27 and 46 of the Vienna Convention on the Law of Treaties. Article 27 provides:

> "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46."

Article 46 in turn provides:

> "1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
>
> 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith."

Thus the general rule is that a breach of internal law, including constitutional law, is no excuse for failure to comply with international obligations. Moreover such a breach can only be relied upon as a basis for challenging the validity of a treaty in quite exceptional circumstances. Only the state whose constitutional rules have been breached may rely on the breach, and it can only do so in a case of manifest violation. The rule under general international law may be even stricter.[55]

32. Thus even if it could be argued that the accession of Cyprus to the EU would be against the expressed wishes of the Turkish community, the fact remains that, under Article 50, the veto power is vested not in that community as such but in a Vice-President duly elected and effectively performing his functions under the Constitution. At present there is no such person, and Article 50 is simply inapplicable. In any event, in present circumstances an alleged violation of Article 50 would not be "manifest". This was the position taken by the EC when the Association Agreement of 1972 was concluded,[56] and again in its consideration of Cyprus's application for membership.[57] It was confirmed by the European Court of Justice in 1994.[58] It has been the consistent position of the United Nations, for example in the periodic resolutions extending the mandate of UNFICYP, which resolutions

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55 See *Case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Jurisdiction and Admissibility)* ICJ Rep 1994 p 112, 122.

56 See above, para 17.

57 See above, para 21.

58 See above, para 3.

have been based expressly on the agreement of the Government of the Republic of Cyprus without any reference to Article 50 of the Constitution.[59]

33. The 1960 Constitution is no doubt unusual in that the three guarantor states have a legally recognised interest in its implementation. But neither the Constitution nor the Treaty of Guarantee give the guarantor states themselves any veto over decisions by the Government of the Republic in the field of foreign affairs, and specifically over decisions to apply for membership of international organisations. The veto power is vested in certain high officials of the Government of Cyprus itself, and that power cannot be transformed into a wholly different and unexpressed veto power to be exercised by the present leadership of the Turkish Cypriots which is seeking to secede from Cyprus (contrary both to the Constitution and the Treaty of Guarantee), let alone by one of the guarantor powers itself. The position in present circumstances is that no Vice-President exists to exercise the veto, and-in the absence of a validly exercised veto in accordance with Article 50, the constitutional authority of the Government to carry on the foreign affairs of Cyprus is unquestionable.

34. That this is the case has been widely recognised. If the argument drawn from Article 50 were valid, this would mean that no treaty concluded by the Republic of Cyprus since 1963 could be valid. This is obviously contradicted by the fact that Cyprus has entered into hundreds of treaties since that date with virtually all states in the world, and their validity has never been challenged despite the impossibility of applying Article 50 of the Constitution.

Article 170 of the 1960 Constitution

35. Article 170 (1) of the 1960 Constitution is also invoked. It provides as follows:

> "1. The Republic shall, by agreement on appropriate terms, accord most-favoured-nation treatment to the Kingdom of Greece, the Republic of Turkey and the United Kingdom of Great Britain and Northern Ireland for all agreements whatever their nature may be."[60]

It is said that, in the event of its accession to the EU, Cyprus will not be in a position to comply with Article 170 so far as Turkey is concerned. But this ignores, *inter alia*, the language of Article 170 itself. Most-favoured nation ("mfn") treatment has only to be extended "by agreement on appropriate terms". In common with other most-favoured-nation clauses, Article 170 does not prohibit Cyprus from entering into agreements which confer benefits on third states. It merely requires that treatment extended to the most-favoured-nation also be extended to each of the guarantors. Moreover, unlike most mfn clauses in

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[59] From the first such resolution (SC Res 186 (1964), 4 March 1964) to the most recent (SC Res 1092 (1966), 23 December 1996, preambular para 3).

[60] Art 170 (2) exempts from the mfn requirement the provisions concerning British bases and military facilities in Cyprus. It reflects Point 23 of the "Basic Structure of the Republic of Cyprus" (1959), and Annex F, Part II of the Treaty of Establishment. The Mendelson Opinion, p 38 cites a discussion at the London meeting of 12 February 1959, where it was said that "The intention was to exclude more favourable bilateral agreements between Cyprus and countries other than the Three Powers, and also to avoid the possibility of either Greece or Turkey securing a more favourable economic position in Cyprus than the other - of Greece, for example, establishing a kind of economic enosis." The key point about this passage is its emphasis on *bilateral* agreements, whether with Greece or third states. Nor does Professor Mendelson discuss the crucial phrase in Article 170, "by agreement on appropriate terms".

treaties, the unilateral undertaking in Article 170 is conditional. Mfn treatment was only to be extended under a subsequent agreement with Cyprus: it was to be a matter for the parties to reach agreement in particular "on appropriate terms" for granting such treatment.

36. It is understood that Turkey has never claimed the benefit of Article 170 of the Constitution. Moreover it is well understood, both among EU members and third states, that entry to the EU does not trigger the general mfn obligations of the entrant to third states. This is consistent with Article XXIV (5) of the GATT,[61] and it is a position which Turkey itself, as a WTO member and an applicant for EU membership, must be taken to have accepted. Indeed, such a position has been expressly accepted in bilateral trade agreements entered into by Cyprus with both Turkey and Greece. The Trade Agreement between Cyprus and Turkey of 9 November 1963 provides in Article 1 for mfn treatment to be extended to duties or charges of any kind on importation of the goods of either country to the other. Article 1 further provides that:

> "The above most-favoured-nation treatment shall not apply:
>
> ...
>
> (c) to privileges, exemptions from taxes (fees), preferences or concessions which each of the Contracting countries has granted or will grant in the future to other countries on account of a present or future participation, entry or association by them to a customs union, a free trade area or an economic community."[62]

Article 1 thus expressly recognises that the mfn obligation in respect of taxes or charges on import of goods is not triggered by more favourable treatment extended by either state to its partners in a free trade area or economic community. The economic community that was envisaged at the time was, of course, the EEC. In the light of this Agreement, as well as of the network of relations created under the association agreements between both Cyprus and Turkey and the EU, it is clear that Article 170 of the Constitution would not require any more favourable treatment to be extended to Turkey in the event of Cyprus becoming an EU member.

37. It should be noted in passing that Article 1 of the 1963 Trade Agreement between Cyprus and Turkey expressly envisages that Cyprus will or may enter an economic community such as the EEC. This contradicts the argument now made that Article 1 paragraph 2 of the Treaty of Guarantee permanently prevents such entry.

Conclusions

38. It has not been necessary in this opinion to deal with any questions that would arise if Article 1 of the Treaty of Guarantee, or Articles 50 or 170 of the Constitution, were to be interpreted so as to preclude Cyprus from acceding to the EU. Even on that assumption, it would be very doubtful whether Turkey could raise any objection, because of its own

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[61] See also the Understanding on the interpretation of Article XXIV of the GATT 1994, in WTO, *The Results of the Uruguay Round of Multilateral Trade Negotiations. The Legal Texts* (Geneva, 1994) 31.

[62] See also the identically phrased Trade Agreement between Cyprus and Greece of 24 August 1962. The Agreements are still in force, neither having been denounced under their Art 11.

breaches of the Treaty of Guarantee.[63] But in our opinion the meaning of the three provisions is clear. Thus questions of estoppel, or of the application of the principle that a party in breach of a treaty provision may not itself rely on it,[64] simply do not arise.

39. For the reasons we have given, there is no basis for the view that Cyprus is prevented by the Treaty of Guarantee, or by any provisions of the Constitution of 1960, from becoming a member of the EU.

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24 September 1997

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[63] For criticism of Turkey for non-compliance with various instruments and resolutions, see e.g. SC Resns 353 (1974), 20 July 1974, para 3; 360 (1974), 16 August 1974, para 1; 367 (1975), 12 March 1975, para 2; 541 (1983), 18 November 1983, paras 1, 2, 7; 550 (1984), 11 May 1984, paras 2-5; 1092 (1996), 23 December 1996, para 2. See also GA Res 37/253 (1983), 13 May 1983, paras 2, 8, 12.

[64] Sometimes formulated in the following terms: *nullus commodum capere de sua injuria propria.*

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PROMOTION AND PROTECTION OF THE RIGHTS OF CHILDREN

Sale of children, child prostitution and child pornography

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly, in accordance with Assembly resolution 51/77 of 12 December 1996, the interim report prepared by Ms. Ofelia Calcetas-Santos, Special Rapporteur on the sale of children, child prostitution and child pornography.

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ANNEX

Report on the sale of children, child prostitution and child pornography prepared by the Special Rapporteur of the Commission on Human Rights in accordance with General Assembly resolution 51/77

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I. INTRODUCTION

1. This report is submitted in accordance with General Assembly resolution 51/77 of 12 December 1996, in which the Assembly requested the Secretary-General to provide the Special Rapporteur on the sale of children, child prostitution and child pornography with all necessary assistance to make the full discharge of her mandate possible and to enable her to submit an interim report to the General Assembly at its fifty-second session and a report to the Commission on Human Rights at its fifty-third session.

2. The Commission on Human Rights, at its fifty-third session, in its resolution 1997/78 of 18 April 1997, welcomed the report of the Special Rapporteur (E/CN.4/1997/95 and Add.1 to 2), requested the Secretary-General to provide the Special Rapporteur with all necessary assistance and urged all relevant parts of the United Nations system to provide the Special Rapporteur with comprehensive reporting to make the full discharge of her mandate possible. The Commission also invited the Special Rapporteur to continue to cooperate closely with other relevant United Nations organs and bodies and to convey her findings to the Commission.

II. WORKING METHODS AND ACTIVITIES

A. Working methods

3. As indicated in her earlier reports, through her analysis of the problem of commercial sexual exploitation of children which has formed the focus of her mandate, the Special Rapporteur has identified three catalysts which play a fundamental role both in the perpetuation and in the prevention of commercial sexual exploitation of children, namely, the criminal justice system, education and the media. The role of the justice system in this regard has already been considered in the Special Rapporteur's previous reports to the General Assembly (A/51/456) and the Commission on Human Rights (E/CN.4/1997/95).

4. The focus of the present report is, therefore, the role of the media and education in preventing and, regrettably, in contributing to the commercial sexual exploitation of children. Awareness of the importance of the media in this respect has increased greatly since the World Congress against Commercial Sexual Exploitation of Children was held at Stockholm from 27 to 31 August 1996, and some national and international initiatives have been developed in the intervening period.

5. In order to obtain a more comparative overview of developments relating to the media and education as catalysts in the field of commercial sexual exploitation of children, the Special Rapporteur, in June 1997, sent a circular to all Governments, relevant United Nations bodies and agencies and intergovernmental and non-governmental organizations, soliciting information to be used in her reports to the General Assembly and the Commission on Human Rights on the following:

(a) Television programmes or publicity preventing or inciting sexual exploitation of children; national directives concerning specific target audiences, broadcasting hours and parental guidance;

(b) Advertising or publicity campaigns against sex tourism and commercial sexual exploitation of children, such as airport publicity, leaflets, posters and promotional articles;

(c) Coverage given by the media (newspapers, television and radio) to court cases involving commercial sexual exploitation of children, for example, child pornography and the Internet; public debates on sanctions against sex offenders;

(d) School curricula: development of sex education programmes, including awareness-raising about the dangers of sexual exploitation and information on available support services; adult education programmes;

(e) Educational or training programmes targeted at professionals working in strategic areas, including immigration personnel, law enforcement officials, medical professionals and social workers;

(f) Rehabilitation and educational programmes, facilities or support services for both child victims of commercial sexual exploitation and sex offenders.

6. By September 1997, replies had been received from the Governments of Brazil, Germany and Singapore.

7. The Special Rapporteur also received information from the following United Nations organizations, programmes and bodies: Economic Commission for Africa, Economic and Social Commission for Western Asia, United Nations Children's Fund (UNICEF), Joint United Nations Programme on HIV/AIDS (UNAIDS), Office of the United Nations High Commissioner for Refugees (UNHCR), United Nations Research Institute for Social Development (UNRISD), International Labour Organization (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO). The following non-governmental organizations also provided the Special Rapporteur with replies to her questionnaire: All-China Women's Federation; All-Pakistan Women's Association; World Association of Children's Friends (Amade) (Monaco); CEMINA (Brazil); CHOW (Belgium); Latin American Committee for the Defence of Women's Rights (CLADEM) (Argentina); CLADEM (Peru); Centro de Estudios y Promoción del Desarrollo (DESCO) (Peru); End Child Prostitution in Asian Tourism (ECPAT) (United Kingdom); European Institute for Crime Prevention and Control (HEUNI) (Finland); International Catholic Child Bureau (ICCB) (Switzerland); NCWC (Canada); Women's International Zionist Organization (WIZO) (Israel).

8. The Special Rapporteur would like to express her appreciation to those Governments, United Nations bodies and agencies and non-governmental organizations that have already provided some very useful and comprehensive information to her. At the same time, the Special Rapporteur urges all those States and intergovernmental organizations that have not replied to her questionnaire to provide her with relevant information, in particular regarding

national initiatives in the field of the media and education to combat commercial sexual exploitation of children, which might be used in her forthcoming report to the Commission on Human Rights. The Special Rapporteur would also like to emphasize that most of the information and materials sent to her up to the time of writing the present report will be discussed in detail in her report to the Commission. Some of the input has been taken into account in the present report, but the Special Rapporteur hopes in particular to receive more substantive information on education so as to be able to present a balanced report.

9. With a view to finding a durable solution to the problem of the sale and commercial sexual exploitation of children, the Special Rapporteur has established procedures to seek from Governments, in a humanitarian spirit, clarifications and information on specific cases of alleged violations of the rights of children within the framework of her mandate. The Special Rapporteur would like to emphasize that the primary objective of such communications is to enter into a constructive dialogue with Governments in order to investigate specific cases in any country and to identify appropriate measures to remedy the situation. The Special Rapporteur, therefore, calls on all Governments to cooperate fully with her in her endeavours.

10. Finally, the Special Rapporteur would like to emphasize that the sources of information and data used in this report to illustrate cases of commercial sexual exploitation of children worldwide are to a large extent secondary and cannot always be validated. In view of the administrative and financial constraints of the mandate and position of the Special Rapporteur, it is virtually impossible to carry out first-hand scientific research and data gathering. The Special Rapporteur therefore relies on the information submitted to her by Governments, United Nations bodies and agencies and non-governmental organizations. The cases used to illustrate the situation of commercial sexual exploitation in different countries are not intended to be exhaustive but rather indicative, especially bearing in mind that hardly any country in the world can claim to be free of the phenomenon.

B. Activities

11. Since the fifty-first session of the General Assembly, the Special Rapporteur has carried out two field missions. In December 1996, she visited the United States of America (Washington, New York, Phoenix, Tucson and San Francisco) to study the issue of commercial sexual exploitation of children, with a particular focus on child pornography and the Internet (for the report, see E/CN.4/1997/95/Add.2). From 25 August to 2 September 1997, the Special Rapporteur carried out a mission to Kenya (Nairobi, Mombasa and Malindi). The report on that mission will be submitted to the Commission on Human Rights at its fifty-fourth session.

12. In October 1997, the Special Rapporteur is invited to address the seventh meeting of First Ladies of the Americas on the topic of commercial sexual exploitation of children. In addition, she will carry out a field visit to Mexico in November 1997, at the invitation of the Government. The mission report will be submitted to the Commission on Human Rights.

13. During the past year, the Special Rapporteur has developed close working relations with the International Programme on the Elimination of Child Labour of ILO, as well as with UNICEF and UNHCR. Such cooperation provides the Special Rapporteur with essential information and assistance, in particular during her fact-finding missions to the field, in the fulfilment of her mandate.

III. INTERNATIONAL DEVELOPMENTS RELATING TO THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

14. Children are perhaps the most vulnerable and defenceless victims of human rights violations all over the world. Commercial sexual exploitation of children, in association with crime and drug abuse, persists in both developed and developing countries.

15. This section illustrates certain developments in the field of commercial sexual exploitation of children in all regions of the world which have come to the attention of the Special Rapporteur. The States mentioned are referred to as examples and the Special Rapporteur would like to emphasize that the list is not intended to be interpreted as exhaustive by any means.

A. Africa

16. In Africa, the Special Rapporteur has noted that some Governments have shown a genuine interest in improving living conditions for children. Good examples are programmes for better primary health care, vaccination campaigns, and efforts to demobilize child soldiers in armed forces. Educational campaigns have also been launched to increase the number of children finishing their primary education.

17. A particularly alarming practice continues nevertheless to affect many countries, namely, the abduction of children from their homes, their enslavement and sale for forced labour or military training to join combat forces. Sometimes children are even forced or indoctrinated to fight against their own communities.

18. The Special Rapporteur notes that in Angola both the Government and UNITA forces have begun to demobilize an estimated 8,000 child soldiers in a campaign initiated by the Ministry of Social Integration. In the Sudan and in northern Uganda, however, there are still reports of ongoing abductions of children for the purposes of child labour or recruitment into the armed forces.

19. In the Central African Republic, the Special Rapporteur has received disconcerting information about the practice of families marrying their daughters as young as 11 or 12, for financial gain, to older husbands. The prevalence of such traditional practices, including the trokosi practice in Ghana, already mentioned in previous reports, is a matter of concern.

20. Another matter of special concern to the Special Rapporteur is the increasing problem of child prostitution in major cities all over the African continent. In South Africa, for example, particularly in big cities like Cape

Town, Durban and Johannesburg, child prostitution appears to be a growing problem, linked to the increasing number of street children, who have left their homes for economic and social reasons or as a result of the breaking down of families and traditional values.

21. On a positive note, the Special Rapporteur has been informed that the Government of Namibia appears to be seriously committed to improving the situation of children, having allocated almost one third of its budget to education. Child abuse is also recognized as a serious problem and authorities have prosecuted several cases involving crimes against children. In September 1996, a child rapist was reported to have been given a 20-year sentence for sexually abusing a 10-year-old girl. Training programmes in handling domestic violence were also provided for police officials.

B. Asia and the Pacific

22. Extensive trafficking in both women and children, especially from India, Pakistan and South-East Asia to the Middle East and Western and Eastern Europe, continues to pose a major problem for the Asian region. This phenomenon is closely linked to child prostitution, the increased numbers of street children, extreme economic needs and tourism. The increasing interest of the press in these matters is, however, to be welcomed, as it leads to more pressure on Governments and civil society to act.

23. Reports from Bangladesh indicate that child abandonment, kidnapping, trafficking for labour bondage and children in prostitution continue to be widespread. UNICEF estimates that there are about 10,000 child prostitutes in Bangladesh. Information received suggests that officials often ignore the existence of phenomena such as child prostitution, or even profit from them.

24. In Sri Lanka there also appears to exist a significant problem of child prostitution. The Government estimates that there are over 2,000 child prostitutes in the country and has indicated that it is committed to combating the problem. In Taiwan Province of China child prostitution reportedly involves anywhere between 40,000 and 60,000 children. Children are being forcibly held in brothels by means of violence, drug addiction and other forms of coercion. Although new legislation has been adopted to prosecute persons using child prostitutes, with a maximum imprisonment of two years, the effects of these new measures cannot yet be evaluated.

25. In Thailand, the National Commission on Women's Affairs has estimated that there are 150,000 to 200,000 prostitutes in the country, of which not more than 20 per cent are children. The Special Rapporteur has noted with satisfaction the commitment of the Thai Government to actively combating the problem, in cooperation with national and international non-governmental organizations.

26. In Indonesia the involvement of the press in addressing the problem of child prostitution is to be appreciated, since this has led to a considerable increase in public awareness and acknowledgment of the problem. In India the media have also started to play an active role in informing the general public of facts concerning child prostitution. Articles on the subject, which are now

appearing regularly in the popular press in India, are doing much to break the silence which has long shrouded such an understandably sensitive subject.

C. Eastern Europe

27. The main concern of the Special Rapporteur is that in Eastern Europe many Governments have not yet adopted special legislation to prohibit child prostitution and child pornography specifically. Such inaction could lead to great impunity for perpetrators.

28. The Special Rapporteur notes with satisfaction, however, that authorities in Slovakia are conducting investigations into alleged paedophile rings, in cooperation with Austrian and Belgian counterparts. In Romania, sexual exploitation of children has attracted domestic media attention which is noted with appreciation by the Special Rapporteur.

29. Attention is drawn, however, to Georgia, where growing numbers of street children and children in prostitution are reported. According to local sources there are approximately 1,000 street children in the capital, Tbilisi. These children are in danger of being forced or recruited into child prostitution.

D. Latin America and the Caribbean

30. Sex tourism and child prostitution also remain a serious problem in the Latin American and Caribbean region. As elsewhere, there exists a close link to extreme poverty, lack of education, drug abuse and the increasing numbers of street children. In conflict zones, guerilla troops continue to recruit children into armed forces and there are reports of teenage female recruits being sexually abused. In some rural areas, the practice of sending young children to work as unpaid domestic labour for more affluent city dwellers continues, putting these children in vulnerable positions. The sale of children for adoption also continues to be a serious problem, as it is reported that foreign adoptive parents are willing to pay from US$ 20,000 to $40,000 in adoption fees and costs to adopt a healthy baby.

31. In Bolivia, the practice of criadito service still exists in some parts of the country. Criaditos are indigenous children between 10 and 12 years old whom their parents send to middle- and upper-class families to perform household work in exchange for education, clothing, room and board. The treatment of these children is often not supervised in any way, and they sometimes become virtual slaves in their new host families. The same practice is reported to exist in Haiti, where it is called restavek (lives with).

32. It is also reported that the use of street children in prostitution remains a serious problem in Guatemala. The estimation of the number of street children is between 1,500 and 5,000, the majority being concentrated in Guatemala City.

33. On a positive note, the Government of Brazil has initiated a campaign against sex tourism and child prostitution organized by the national tourist agency. The campaign includes restrictions on the use of erotic pictures of

young women in advertising holidays to Brazil and an information campaign to deter tourists from engaging in the sexual exploitation of children. It also includes a 24-hour hotline number for reporting cases of sexual abuse, as well as the creation of a special police office to investigate sexual crimes against children.

E. Western European and other States

34. One of the main problems in the Western European and other States region appears to be the spread of child pornography material, especially through the new media, as well as rings of paedophiles cooperating in the abuse of children. The abusers originating from the region often travel to countries where the supply of children is greater and the legislative controls are either weaker or not effectively implemented. The Special Rapporteur therefore welcomes the continuing process of adopting extraterritorial legislation by countries of origin of tourists who engage in child sex abuse. The Special Rapporteur also encourages further cooperation between countries considered to be main sources of child victims and those considered to be main sources of child exploiters, in an effort to combat the problem jointly. In Australia, an airport education campaign was carried out by customs officers to deter travel abroad for child sex tourism.

35. In Austria, allegations of an Austrian-Slovak child pornography ring have led to strong public and political pressure to further tighten legislation of child pornography. One specific case which greatly perturbs the Special Rapporteur is the suicide of a 12-year-old boy in Upper Austria, who killed himself after photographs showing him being sexually abused by a paedophile had been posted on the Internet.

36. In Belgium, the public debate that has followed the Dutroux case has caused serious criticism of government authorities, the judiciary and the police force on the investigation of this case, leading to accusations of attempts of corruption and cover-up within the Government. The Special Rapporteur encourages the Government of Belgium in its efforts to take active measures to combat the phenomenon and to restore public confidence in the authorities through adopting effective legislation and administrative measures.

37. In Ireland, child sexual abuse has received increasing media attention, especially in connection with the alleged sexual abuse of children by orphanage staff and members of the Roman Catholic clergy. In at least three cases members of the clergy have pleaded guilty and several other cases are pending.

38. In the Netherlands, for the first time, a citizen was tried for sexual abuse of minors abroad on the basis of extraterritorial jurisdiction. The perpetrator had been caught sexually abusing minors in the Philippines and was given a sentence of five years' imprisonment after returning to the Netherlands.

39. According to Home Office statistics in the United Kingdom of Great Britain and Northern Ireland, it is estimated that 110,000 men in the country have been convicted of offences against children. It is further estimated that 1 in 60 of those convicted were convicted of a sex crime by the time they were 40 years old

and that 1 in 90 were convicted for a serious sex offence, such as rape, incest or gross indecency with a child.

IV. SPECIAL FOCUS ON THE MEDIA AND EDUCATION

40. This section attempts to illustrate the decisive role played by all types of media, as well as education, in the prevention of commercial sexual exploitation of children worldwide. It also highlights the potential danger of rendering children even more vulnerable to sexual exploitation when the media and education are used in an uninformed and careless manner. Special attention is devoted to the role of the information superhighway, or Internet, the implications of which for the exposure of children to potentially harmful materials, in addition to the wealth of information and communication possibilities it offers, have not yet been fully understood.

41. In the present report, the media and education are discussed in combination, in order to demonstrate the intrinsic interlinkage between the two catalysts. In particular, the Special Rapporteur would emphasize the importance of the role played by the media as a tool of general education both for children and adults, especially in the protection of the rights of the child. In her report to the Commission on Human Rights, however, the Special Rapporteur hopes to explore both the media and education, in particular national initiatives undertaken in these fields to prevent commercial sexual exploitation of children, in greater depth, in separate chapters, on the basis of information and materials received in response to her questionnaire (see sect. II). The Special Rapporteur appeals once again to all Governments and intergovernmental and non-governmental organizations to provide her with more documentation and materials in this regard, so that she may present a comprehensive and balanced discussion.

42. The Special Rapporteur would like to lay out, in the broadest terms, the international legal framework that regulates the protection of children from commercial sexual exploitation but yet guarantees the rights of children to education and information. It is important to note that the right of children to be protected from exploitation may at times appear in juxtaposition with the right of the media and communications freely to express themselves and disseminate information.

43. The right to freedom of expression is given extensive protection in most democracies, although it is subject to considerable debate and interpretation as to its scope, meaning and purpose. The right of the media to publish and broadcast information, however, and the right of audiences to receive information have to be carefully balanced against the right of the child to be protected from abuse, and the child's right to privacy. Recently, cases involving the rights of suspected and convicted paedophiles have moreover created much controversy and discussion in certain countries.

A. International legal framework

44. Outlined below are those human rights intended to protect the child from falling victim to commercial sexual exploitation, including the right of the child to receive information and education. The right of all persons, including children, to be informed and educated, as well as the right of all persons to impart and disseminate information are also of relevance when considering the impact of the media and education on commercial sexual exploitation of children.

45. Under the Convention on the Rights of the Child (General Assembly resolution 44/25, annex), children are, broadly speaking, endowed with the rights to respect and identity (articles 2, 7, 8, 23, 26 and 40), as well as with rights to economic, social and cultural development (articles 6 and 24). States parties to the Convention have also undertaken to protect such rights of the child by creating and strengthening a protective environment (articles 3, 9, 11, 16, 19-22, 24, 25, 30 and 32-38) and by promoting a caring environment (articles 18, 23, 24, 26, 31 and 39). All these groups of rights contained in the Convention are directly or indirectly relevant to the protection of the child from sexual exploitation.

46. More specifically, under articles 19 and 34, States parties undertake to protect the child from all forms of sexual exploitation and sexual abuse, taking all appropriate measures to prevent the inducement of children to engage in any unlawful sexual activity, the exploitative use of children in prostitution or other unlawful sexual practices and the exploitative use of children in pornographic performances and materials.

47. In addition to providing for protection from the physical act of sexual exploitation, the Convention prohibits arbitrary or unlawful interference with a child's privacy or unlawful attacks on his or her honour and reputation, and gives the child the right to the protection of the law against such interference or attacks (article 16).

48. While all States parties to the Convention have agreed to protect the child from becoming a victim of sexual exploitation, several provisions of the Convention recognize that education and the media play an important role in preventing such violations by empowering children through information and education.

49. One of the key provisions in this context is article 17, under which States parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. Article 13, moreover, provides for the child's right to freedom of expression, including the freedom to seek, receive and impart information and ideas of all kinds, in writing or in print, in the form of art, or through any other media of the child's choice. This right may, however, be subject to certain restrictions, as provided by law and as are necessary for respect of the rights or reputations of others or for the protection of, inter alia, public morals. Under articles 28 and 29, children have the right to education and educational and vocational information, directed to the development of the

child's personality, talents and mental and physical abilities to their fullest potential.

50. Throughout the Convention, the best interest of the child is the underlying principle - a principle which necessitates a careful balance between the rights and freedoms of the child and the responsibility of parents, guardians and society as a whole to protect the child and to ensure his or her upbringing and development and physical, mental and moral integrity.

51. All persons disseminating information through the media and education, while endowed with rights and freedoms freely to express themselves and to seek, receive and impart information in accordance with article 19 of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex), are also bound to respect the right of privacy of children victims of commercial sexual exploitation under article 17 of that Covenant. The aforementioned article 19 provides that the exercise of the right to freedom of expression carries with it special duties and responsibilities and may be subject to such restrictions as are provided by law and are necessary for the respect of the rights or reputation of others and for the protection of, inter alia, public morals. The International Covenant on Economic, Social and Cultural Rights (ibid.), when providing for the right of everyone to education, emphasizes that such education should be directed to the full development of the human personality and the sense of its dignity and towards strengthening the respect for human rights and fundamental freedoms.

52. A dilemma already mentioned is the protection of the right to privacy of child sex offenders, which has been widely debated in some countries, where civil liberties defenders are at odds with those who argue that such rights may be limited or restricted if necessary for the protection of public morals.

53. Another issue posing legal challenges for protecting the rights of the child is the definition of child pornography. The Special Rapporteur has already addressed this issue (see E/CN.4/1997/95/Add.2), arguing that the Internet renders the traditional legal definition of child pornography, namely the visual depiction or use of a child for pornographic purposes, outdated. The Special Rapporteur, therefore, encourages the Committee on the Rights of the Child to reaffirm that the scope of article 34 of the Convention on the Rights of the Child should be interpreted to include an absolute prohibition on "pseudo-child pornography", including the "morphing" of child and adult bodies to create virtual child pornographic images.

B. Facets of the media

54. The media are powerful tools of mass communication nationally and internationally, and their potential to protect children from sexual abuse and exploitation should be explored thoroughly. Media have many facets, and can reach a wide and varied audience. If the dangers of child sexual abuse are publicized, all sectors of society are encouraged to discuss the issue and, most importantly, acknowledge that the phenomenon exists, with a view to taking preventative measures to protect children.

55. This section considers ways in which the media affect the lives of those confronted with the problem of child sexual abuse: the children, their parents, the abusers and the general public. It also highlights both the positive and negative aspects of presenting this question in the glare of world publicity.

1. The role of the press in the reporting of sexual offences

56. It must be acknowledged that the manner in which sexual offences are reported can have a devastating impact upon the lives of those involved. At the same time, journalists who act with sensitivity and concern for the victims on whom they report can do much to further the healing process when the pain and anguish suffered is publicly acknowledged and efforts are made to restore the dignity of the victims. However, even the most well-meaning of reporters can unwittingly compound existing problems of sexual exploitation and further a victim's distress by the insensitivity of their actions.

57. Journalists often have access to information which others ordinarily find very difficult to obtain. They often work together with non-governmental organizations and the police to locate and uncover exploiters and places of exploitation. The reporting of arrests and convictions can, therefore, be a strong deterrent factor. Unfortunately, reporters investigating commercial sexual exploitation of children have sometimes provided information which has helped exploiters, for example, by showing street names, the location of villages or easily identifiable locations. As mentioned in an earlier report (E/CN.4/1995/95/Add.1), the Special Rapporteur regretted that two documentary films she had been shown during her visit to the Czech Republic, on the problem of boy prostitution and boy pornography, had resulted in an increased demand for the services of the boys featured, whose identities and locations had not been disguised.

58. The potential of the press to affect public perceptions of crimes involving sexual abuse is not limited to the subject matter involved, but extends to the manner in which it is reported. Many reporters appear to place the blame upon women and girls when sexually degrading events or crimes occur. Reports of violent rapes lose their ability to arouse emotions of outrage and sympathy for the victims when set alongside photographs of the victim which could be interpreted as sexually provocative, or even set in the same newspaper as pictures of topless women. The media in some countries often appear to confuse victims with perpetrators by publishing pictures of children who have been sexually exploited and blanking out the faces of offenders.

59. Even before criminal proceedings have been initiated, the way in which the press reports the events can affect the outcome of the trial. There have been many instances of so-called "trial by media" where criminal proceedings have had to be abandoned as the guarantee of a fair trial could not be ensured owing to the prejudgemental nature of the press reports. This not only denies the victim the satisfaction of a public acknowledgment of his or her suffering coupled with the opportunity to see the abuser sentenced, but also denies the accused the opportunity to defend himself against the allegations made, in a properly constituted legal setting. Similarly there have been cases where journalists

have unwittingly corrupted evidence by paying for stories, enabling criminals to escape conviction on a technicality.

60. The right of the press to report details of crimes and the right of the public to be informed do not justify the obvious sensationalism which many reporters seek to create. An example of this was seen during the trial, in the United Kingdom in 1996 of Rosemary West, who with her late husband was accused of committing sexually motivated murders of several young women and girls. Following an increasingly grisly series of newspaper reports regarding the activities of the accused couple, one newspaper challenged its readers by asking:

> "How much do you want to know about what Rosemary and Fred West are accused of doing to young girls? Do you want every detail, exactly what was done with a vibrator or roll of adhesive tape, how many lashes, exactly where on the genitals, and how much force it takes to sever a head? Or will 'severe sexual abuse' do?"[1]

61. Although the interests of justice may require the publication of particularly unpleasant abuses, the victims may suffer further trauma, having testified in court, from reading unnecessarily extensive details of their testimony in the newspapers. Occasionally the temptation to broadcast or print sensational pictures has itself verged on pornography and thus on exploitation. It should be remembered that daily newspapers do not carry any adult guidance rating, and are a normal part of most families' daily life, available to be read by children of all ages.

2. Visual

62. The reality of child sexual abuse was brought to television screens in the United Kingdom earlier this year, with the screening of a drama documentary entitled No Child of Mine. It told the allegedly true story of a young girl who was sold for sex by her father at the age of 10, sexually abused by her mother, raped by her stepfather and a social worker, and forced to play sexual games with her parents' friends.

63. The documentary was commended for bringing the subject into the public arena, but concerns were expressed for the psychological well-being of the 13-year-old actress who portrayed the victim, as she had to act out graphic scenes of rape.

64. Also in the United Kingdom suggestions were made that a popular television series entitled Band of Gold, about the lives of a group of teenage prostitutes, influenced a young teenaged viewer to become a prostitute. Although she still lived at home, attended school and had no apparent need to earn money, she became attracted to what she perceived to be a glamorous lifestyle, but within six months she had been murdered by two male clients.

65. In the United States of America, a controversial film entitled Kids was banned from general release last year. It graphically depicted under-age sex and drug taking and was branded as "kiddie porn" by many critics. Any medium

which highlights in a sensitive way the damage that can be caused by promiscuous under-age sexual activity would be welcomed, but that film was criticized as having little purpose or justification, merely portraying a group of unsupervised teenagers leading a destructive lifestyle, in a way that would merely desensitize the audience to the serious nature of paedophilia and child sex. Fears were also expressed that the film would be enjoyed by many paedophiles, who would be led to feel that their desires and behaviour were normal and acceptable.

3. Audio

66. The popularity of the radio as a primary method by which information is received cannot be overestimated. This is especially true in developing countries where access to television is limited and the level of illiteracy is high.

67. Mozambique is one of 10 countries in eastern and southern Africa in which a UNICEF-assisted Adolescent Girl Communication Initiative has been developed. In Mozambique a major part of this initiative has involved a radio drama series in which Mozambican actors act out a lively series of plots conveying messages such as the importance of staying in school, how to deal with sexual harassment, AIDS-awareness, and covering delicate issues such as female genital mutilation, early marriages, and the domestic workload of girls. In addition to the radio series, the Initiative has developed animated films, comic books, story books, audio cassettes and posters resulting from months of collaboration among hundreds of writers and artists working with input from thousands of ordinary people who have experienced difficulties such as those which form the subject matter.

68. The value of the telephone as a medium for instant two-way communication affording the users a degree of anonymity has been capitalized upon, both positively and negatively. Positively, helplines and hotlines allow victims to talk about their abuse, or reluctant witnesses to report what they have seen without the emotional strain of a face-to-face meeting. Sometimes famous television personalities have initiated or have been used to publicize these special lines. Negatively, however, the same telephone service can also be used for the sexual exploitation of children, an example being the so-called dial-a-porn or phone sex services. These services can often be accessed by children without the knowledge of their parents. Protecting children from these services has become a great concern in many parts of the world: in the United States, the Congress has passed a bill to that end, while in Japan a similar problem has been solved effectively by voluntary self-control in the private sector.

69. In the United Kingdom, a well-known television presenter launched Childline through her programme That's Life, reaching a huge ready-made audience. The programme had previously appealed to viewers for their help in conducting a survey on child abuse, and the BBC ran a telephone helpline for 24 hours after the programme for adults and children who wished to call.

70. The number of children who called, wanting to confide details of cruelty and sexual abuse while remaining anonymous, was such that the lines were jammed throughout the 24 hours. A special permanent free telephone helpline was then established, which now, more than 10 years later, provides counselling for an estimated 90,000 children and young people every year. It offers children a free and confidential opportunity to speak about their problems. They can remain anonymous if they choose, and are not asked to name their abusers. The counsellors do not make referrals against a child's wishes unless the child's life is in danger, though they will refer the case to the social services or the police if the child so wishes. Approximately 20 per cent of the callers are counselled about sexual or physical abuse. The special Childline number is now widely publicized through various means; most recently the number has been printed on the back of bus and cinema tickets.

4. Print

71. Photographs of children in their underwear for mail-order catalogues are an easily accessible source of material for paedophiles, and are commonly used, as has been revealed by the discoveries of extensive paedophilia collections during police raids on the homes of suspects.

72. Calvin Klein recently yielded to pressure and removed its advertising campaign showing teenagers in "suggestive" poses. The advertisements showed no nudity, and the models were sitting or standing by themselves, in passive poses, but opponents described them as "kiddy porn".

73. Even in the case of adult fashions, young teenage girls are increasingly being used to model clothes, creating the perception that thin pre-pubescent body images are the most desirable. This has not only had the effect of increasing the demand for child prostitutes, but has also led to an increase in eating disorders among older girls and women whose fully developed bodies are larger than what is promoted as "normal". Similarly, it is appropriate at this point to reiterate earlier concerns of the Special Rapporteur (see E/CN.4/1997/95) that the extensive advertising of fashionable goods in newly emerging markets such as those in Eastern Europe has led to an increase in cases of children and young people prostituting themselves in order to raise money to buy such goods.

74. In Belgium, an extensive programme using posters, known as "Article 34", has been running since 1994. Posters are used to encourage child victims of sexual exploitation to tell someone of their abuse, and not to remain silent. The posters give the telephone numbers of Ecoute Enfants, a telephone service which covers the area of the French-speaking community and is staffed by professional counsellors. The approach differs depending on whether the target audience is under or over the age of 12.

75. Posters and leaflets are just two of the many methods being employed by the increasing numbers of campaigns aiming to raise awareness of the problem of child sex tourism - the travel of paedophiles to foreign countries for the purpose of finding and abusing child prostitutes. Among the more prominent campaigns is that of ECPAT, which has targeted airports and travel agents

distributing child sex tourism law brochures to make tourists aware of the law relating to such crimes. Similar initiatives have included videos, car stickers and luggage labels.

76. In Belgium, the Flemish community has set up a sensitization campaign on sex tourism and child prostitution through the organization Kind en Gezin (Child and Family). Brochures and leaflets are distributed through travel agencies and the offices of airline companies, warning people who travel to high-risk destinations of the problems of paedophilia and sex tourism. The objective of the campaign is to denounce existing networks of child prostitution and expose the practices which exist.

77. A Children's Society campaign leaflet which highlighted the fact of child prostitution in the United Kingdom was condemned as being "irresponsible" by the social services there, as it was felt that it would encourage child prostitution rather than condemn it. The leaflet read: "Why travel six thousand miles to have sex with children when you can do it ...?" and named Bournemouth, Birmingham, Manchester or Leeds. However, the charity said that it was necessary to use shock tactics as child prostitution was "an uncomfortable subject that does create reaction".

5. New media: the role of new technologies in the commercial sexual exploitation of children

78. "First, the nature of technology: it is a great blessing, and what do we know about blessings? That every blessing has its curse. The greater the blessing, the nastier the curse. Technology has the tendency to separate people from the consequences of their worst behavior."[2]

79. The Internet is a giant network of networks. It is virtually impossible to determine its size at any given moment, but it has grown massively since its origins as an experimental project linked to defence-related research in 1969. In 1981, fewer than 300 computers were linked to the Internet but, by 1996, it was estimated that 9.4 million host computers were linked, 60 per cent of them located in the United States. Reasonable estimates suggest that as many as 40 million people around the world can and do access the enormously flexible communication medium. That figure is expected to grow to 200 million Internet users by the year 1999.[3]

80. The Internet is in a unique position to take advantage of new technology, as text, photographs, video and audio clips can be disseminated worldwide instantly. The most constructive ways in which it can be used to tackle the commercial sexual exploitation of children include using the new technology to further expand and develop methods of communication and education for the prevention of such exploitation. However, the virtually inexhaustible categories of information which the Internet can provide include innovative and simplified means of sexual exploitation.

81. The problem of accountability. The Internet is a decentralized, global medium of communications known as "cyberspace" that links people, institutions, corporations and Governments around the world, and the computer networks are

owned by governmental and public institutions, non-profit organizations and private corporations. No single entity, academic or governmental, corporate or non-profit, administers the Internet. There is no central point at which all the information is stored or from which it is disseminated, and it would not be technically feasible for any one entity to control all of the information conveyed on the Internet.

82. The risks to children on-line. While the Special Rapporteur recognizes and commends the educational value, especially for developing countries, of the wealth of information available on the Internet, there are many ways in which children may be exposed to danger on-line. The two main ways in which children may potentially be harmed by child pornography are by being exposed to pornography and by being filmed or photographed or made the subject themselves in some other way.

(a) The child as viewer

83. Children who are exposed to pornography are in danger of being desensitized and seduced into believing that pornographic activity is "normal" for children. It can provide a kind of modelling that may adversely affect children's behaviour and result in learning experiences which connect sex to exploitation, force or violence.

84. There have been some highly publicized cases of abuse involving computers but reported cases are relatively infrequent. Like most crimes against children, many cases go unreported, especially if the child is engaged in an activity that he or she does not want to discuss with a parent. Teenagers are particularly at risk because they often use the computer unsupervised and because they are more likely than younger children to participate in on-line discussions regarding companionship, relationships or sexual activity. These risks include exposure to inappropriate material of a sexual or violent nature, or encountering e-mail or bulletin board messages that are harassing, demeaning or belligerent. Another risk is the possibility that, while on-line, the child may provide information or arrange an encounter that could risk his or her safety or the safety of other family members. In a few cases, paedophiles have used on-line services and bulletin boards to gain a child's confidence and then arrange a face-to-face meeting.

Restricting access to unwanted on-line material

85. Various manufacturers have begun to build systems and have marketed software intended to enable parents to control the material which comes into their homes and may be accessed by their children, allowing them to enjoy the educational benefits of the Internet while shielding them from material that is objectionable according to the parents' own particular standards.

86. Some software manufacturers have started to employ people to search the Internet for sites containing potentially offensive material, which they then add to a list every week. For those users who have the relevant software installed, the updated elements are automatically added to the list of previously blocked sites.

87. Other types of programs allow a parent to monitor everything passing through their computer. Parents can enter such phrases as "What's your name?" and "What's your phone number?" in a phrase book. When the software detects one of the targeted phrases printing across the terminal, for example in a chat room of a commercial on-line service, it immediately logs off the service.

Content on the Internet

88. The types of content on the Internet defy easy classification, and can be as diverse as human thought. Such diversity is possible because the Internet provides an easy and inexpensive way for a speaker to reach a large audience, potentially of millions. Any Internet user can communicate by posting a message to one of the thousands of news groups and bulletin boards or by engaging in an on-line "chat", and thereby reach an audience worldwide that shares an interest in a particular topic.

89. Because of the different forms of Internet communication, a user of the Internet may speak or listen interchangeably, blurring the distinction between "speakers" and "listeners" on the Internet. Unlike traditional media, the barriers to entry as a speaker on the Internet do not differ significantly from the barriers to entry as a listener. Once one has entered cyberspace, one may engage in any dialogue that occurs there.

Sexually explicit material on the Internet

90. Sexually explicit material includes text, pictures and chat between users. It includes bulletin boards, news groups, and the other forms of Internet communication, and extends from mildly titillating to hard-core pornography. Although surveys done by on-line administrators suggest that pornographic sites are among the most often used on the Internet, the percentage of such sites is not certain. Once a provider posts material on the Internet, it is available to all other Internet users worldwide, and the provider cannot prevent that content from entering any community. The Internet technology gives a speaker a potential worldwide audience, although almost all sexually explicit images are preceded by warnings as to the content.

Identity of Internet users

91. It is impossible to determine conclusively the identity or age of a user accessing material through the Internet. An e-mail address may comprise an alias or use an anonymous re-mailer. There is also no universal listing of e-mail addresses with corresponding identities, and any such listing would rapidly become incomplete. A sender therefore has no way of knowing whether an e-mail recipient is an adult or a minor. Similarly, even individuals engaging in chat room discussions cannot ensure that all readers are adults.

92. Even if it were possible with the available technology to block access for children to certain news groups or chat rooms, there is no method by which the creators of news groups that involve discussions of normally acceptable subjects such as art or politics, but could potentially elicit indecent contributions, could limit the blocking of access by minors to the indecent element only, while still allowing them access to the remaining content. Even security systems such

as credit card verification or adult password verification are unlikely to develop the capacity to ascertain that the user of the password or credit card is over 18.

93. Therefore, all speech on any topic that is available to adults will also be available to children using the Internet, unless it is blocked by screening software running on the computer the child is using. It is not possible for a speaker using current technology to know if a listener is using screening software.

94. The attempts to regulate children's access to pornography by the development of software programs, although very welcome, cannot achieve more than a very limited success, as these programs can be bypassed by users with a good knowledge of the Internet and some technical sophistication. Even if better technical solutions become available, this approach is inadequate because children can increasingly find access to another computer, and their technical expertise is often far superior to that of their parents.

Anonymity

95. Anonymity is important to Internet users who seek to access sensitive information. A user can invent virtually any identity and route a message through different countries so that when it reaches its destination it will be impossible to determine its origin. It is also possible to re-route e-mail and images through what are referred to as "anonymous re-mailers". These take incoming messages and remove the source address, assign an anonymous identification code number with the re-mailer's address, and forward it to the final destination. Responses to the anonymous messages are then similarly encoded and the responder also remains anonymous. In Finland, one such re-mailer service used to be operated by Johan Helsingus, who, however, closed down the service after being accused of paedophilia, which he strongly denied. An adverse repercussion of the close-down was suffered by the British organization The Samaritans, which counsels people contemplating suicide and has increasing numbers of computer contacts, many of whom use the "re-mailer" service to remain anonymous.

(b) The child as material

96. The advances in computer technology, including the use of camcorders, VCRs, home-editing desks, computer-generated graphics and editing, have made the creation and distribution of child pornography easier, cheaper and more difficult to detect. It has developed into a multi-million-dollar industry which can be run from within the exploiter's home.

97. Every photograph or videotape of child pornography is evidence of that child's abuse. The distribution of that depiction repeats the victimization over and over again, long after the original material was created. A case in point is the death by suicide of a 12-year-old boy in Upper Austria, who killed himself after discovering, in addition to the trauma of being sexually abused by an older man, that photographs of those abusive acts had been posted on the Internet.[4]

98. Images can be altered by computer. It is not difficult to add to an image or delete parts of it, thereby creating pseudo-photographs. A child's face can be superimposed on an adult's body, and adult features such as breasts and genitals can be minimized so as to make the images look like children. The distribution of the altered image is still considered to exploit the child whose face is shown. It is also possible to insert digital images of a person into a video in which he or she has not appeared. Life-like child pornography is now being created without using any real children at all.

99. There are an increasing number of cases of child pornography being reported which do not involve visual images. An unusual legal situation arose following the arrest of 19-year-old Joseph Pecchiarich in Mississauga, Canada, in 1993. He became the first person in Canada to be convicted of distributing child pornography via computer, but he had never photographed or filmed actual children. He wrote and posted on the Internet several stories which depicted himself having sex with several female children, who were always portrayed as willing partners. He was arrested for distributing child pornography, which under Canadian law is defined not only as materials involving real children, but that which depicts children involved in sex, or advocates sex with a child under the age of 18. He was charged under section 163.1, which was debated in parliament as bill C-128, and became law on 1 August 1993, amending the Canadian Criminal Code. One of the ideas behind the law is that the harm caused by child pornography extends beyond the direct abuse of children in its production and that such material has great potential to promote child sexual abuse whether the child portrayed is a real person or not.

100. The Internet can be used by paedophiles to contact each other and they can set up bulletin boards to exchange information relating to their sexual interest in children, or have running conversations in the form of chat rooms on such subjects.

101. For those who would seek to access images of child pornography through the Internet, a basic search using the most obvious keywords such as "child pornography" will normally direct the user towards sites campaigning against the Internet being used as a medium for the distribution of such material, or news items relating to the arrests of those suspected of being involved. Many non-governmental and private organizations and individuals are starting to voice their fears for the future of the information superhighway, and much research is being carried out to consider the best ways to tackle the problem.

102. Unfortunately, even the extensive and ever-increasing collection of well-meaning initiatives, studies and surveys into the nature of the problem and possible ways to approach a solution have not escaped allegations of abuse. An example of this is the controversy surrounding the "cyberporn" study of Marty Rimm of Carnegie Mellon University. The ethics of the study, entitled "Marketing pornography on the information superhighway", which purported to analyse the amount and nature of pornographic materials being posted on the Internet, have been called into question, as the study involved looking for pornography, downloading it, and studying how it had been classified. Criticisms of the way the research was carried out included accusations of invasion of privacy, deception, placing human subjects at risk, and possible

fraudulent data gathering. It was also alleged that the study was a deliberate search for child and teen pornography.

C. National and international initiatives

103. Two possible means to prevent child pornography from being posted on the Internet are the legal system and self-regulating initiatives. As the development of the Internet is still in its infancy, Governments that have attempted to regulate its use have often not fully understood either the technology or the implications of their actions to control it. Self-regulating initiatives, which give the users of the Internet some responsibility over what should be removed, have made some progress towards removing the conflict between regulation and freedom of expression.

104. In the Netherlands, the Hotline for Child Pornography on the Internet was created by the Foundation for Internet Providers, Internet users, the National Criminal Intelligence Service, the National Bureau against Racial Discrimination and a psychologist. Like other national hotlines that are starting to be set up, it operates by asking Internet users to report any child pornography that they find. The Netherlands Hotline tries to have a preventative attitude towards the problem, in that once a site is reported, the Web Site provider will ask the issuer of the material, if he can be traced, to remove it from the Internet, and will report that person to the police if he or she fails to do so.

105. The hotline has also tried to raise awareness of the risks of spreading child pornography, including the fact that the penalty in the Netherlands is four years' imprisonment. Much attention has been given to the hotline by the media, thus further stimulating the process of awareness and prevention. Instead of being censors, such hotlines are intended to be regarded as initiatives against censorship, by indirectly targeting the poster of illegal child pornography instead of whole areas of information and communication.

106. In India, the Government has attempted to prevent misuse of the Internet by limiting access to the service to the academic world. As a result, the Internet remains inaccessible to the individual or commercial user. Similarly, the entry of foreign print and electronic media into the country has provoked a controversy, with the Government still undecided about its stand.[5]

107. Singapore has attempted to regulate the content of the Internet as far as possible, through a Class Licence Scheme, where Internet service providers and Internet content providers are required to block out objectionable sites as directed by the Singapore Broadcasting Authority. Schools, libraries and other providers of Internet access to children are required to institute a tighter level of control, although options as to how this could be implemented have not yet been identified. The Special Rapporteur has learned that concerns have been expressed as to the scope and vagueness of the Internet content guidelines and the effect that they might have on the Singaporean right to freedom of expression.

108. In China, Internet users must register with the police, and it is reported that a company in Massachusetts, United States, is investing in technology designed to allow the Government of China to censor the Internet.

109. The Internet Society of New Zealand and the Internal Affairs Department set up a joint working group to tackle pornography on the Internet in December 1996. This followed several high-profile raids and monitoring exercises by the authorities. The Society is also developing a code of practice for Internet service providers.

110. In connection with the first World Congress against Commercial Sexual Exploitation of Children held at Stockholm in August 1996, the Norwegian Ombudsman for Children and Save the Children Norway initiated a project with the aim of identifying paedophile networks: systems, methods, codes and ways of communication used by criminals involved in the sexual exploitation of children. Extensive investigations undertaken by professional computer hackers revealed organized trading in child pornography on the Internet, and special sites containing information on sex tours and meetings. In one chat group hard-core amateur child pornography was found, showing girls and boys between the ages of 8 and 12 being raped repeatedly by adults of both sexes.

111. An international conferences on combating pornography and violence on the Internet - a European approach, was held on 13 and 14 February 1997 in London, organized by the Association of London Government. Topics discussed included the possibilities of technically and legally controlling the Internet, cooperation from the police, and national and international policy for the future.

112. In the United States of America, the Supreme Court recently ruled that a federal law which sought to curb indecency on the Internet was unconstitutional. The plaintiffs, who included various organizations and individuals associated with the computer and communications industries, and those who publish or post materials on the Internet, challenged on constitutional grounds provisions of the Communications Decency Act of 1996. They contended that two provisions of the Act directed to communications over the Internet which might be deemed "indecent" or "patently offensive" for minors, defined as persons under the age of 18, infringed upon rights protected by the First Amendment and the due process clause of the Fifth Amendment, in that adults would be denied access to materials which they had the right to see.

113. Since the Internet crosses state and national boundaries, Internet users must be careful that they avoid violating not only the federal laws and their own state laws, but those of any other State which might become involved. In one famous case, Operation Longarm, United States authorities, with the cooperation of the Government of Denmark, tracked down the identity of callers from the United States who downloaded child pornography from a Danish bulletin boards (see E/CN.4/1997/95/Add.2). The United States Customs services then raided the homes of the suspected callers and confiscated their computers, floppy disks and other materials. Several people were prosecuted as a result.

114. The United Kingdom police were involved in Operation Starbust, an international investigation of a paedophile ring thought to be using the Internet to distribute graphic pictures of child pornography, and the biggest operation so far carried out in the United Kingdom. Nine British men were arrested as a result of the operation, which involved other arrests in Europe, America, South Africa and the Far East. The operation identified 37 men worldwide.

115. Also exposed during Operation Starbust was Father Adrian Mcleish, 45, a Roman Catholic priest in Durham who held the largest known collection of illicit matter yet gathered electronically. He had amassed a vast store of obscene pictures and drawings in his presbytery and exchanged thousands of explicit e-mail messages with other paedophiles. He was sentenced to six years' imprisonment in November 1996. He admitted 12 specimen charges of indecent assaults against two boys of 10, one aged 12 and another aged 18. He also admitted distributing indecent photographs, possessing them with intent to distribute them and being involved in the importation of pornographic videos of children. There was evidence that he had sent pictures of at least one of the boys he had abused and talked on the Internet of "grooming" the boy for use in later life. He had also enhanced some pictures to make them more sexually explicit.

D. Education

116. The Special Rapporteur regrets the lack of information relating to the role of education in the context of her report. It is hoped that more information will be received prior to the compilation of her next report to the Commission on Human Rights.

117. The increased awareness of the need for AIDS education in schools has had the welcome effect of bringing the subject of early sexual behaviour and child sexual abuse into the arena of the school curriculum in many countries which had previously been reluctant to introduce sex education, owing to a misplaced fear that such education could encourage sexual activity among children.

118. In Argentina, there is strong opposition from the representatives of the Catholic Church to the implementation of sex education programmes in schools. To date, such programmes have not been implemented. However, educational and training programmes targeted at professionals working in strategic areas, including immigration personnel and law enforcement officials, cover issues of child sexual abuse and exploitation.

119. UNAIDS recently commissioned an update of an earlier World Health Organization review of studies, carried out mainly in the United States and Europe, on the effect of sexual health education in schools. That review indicated that education on sexuality or HIV does not encourage increased sexual activity and that quality programmes actually helped to delay first intercourse.

120. There is no universal consensus as to the age at which a child should begin to receive sexual health education, but the increasing evidence of sexual abuse in particular has persuaded some teachers and AIDS workers that some form of education at primary school is necessary.

121. In Zimbabwe, such education is started in school for children aged 8 or 9, as the problem of child sex abuse and rape is such that it is considered vital to introduce the subject at that young age. Similarly, it is important that parents are educated as to the need for their children to be taught about these dangers, and for such education to be targeted towards those children who do not attend school.

122. In northern Thailand, for example, the Daughters of Education project provides funding for girls who might otherwise be sold into the sex trade, enabling them to remain in school and develop better prospects. Also in Thailand, a Children's Forum has been created in parliament, securing the involvement of children in decisions relating to themselves. A "media page" in newspapers and magazines channels children's experiences to the adult world.

V. RECOMMENDATIONS

A. Media and education

1. Prevention and advocacy

123. As discussed above, education and the media as catalysts in the prevention and elimination of commercial sexual exploitation of children are considered together since the Special Rapporteur believes that a combination of the most positive elements of each catalyst would create a strong forum for awareness-raising, with the goal of preventing abuses against children, sexual or otherwise, through informed advocacy. Listed below are some strategies which the Special Rapporteur urges Governments, in cooperation with civil society and non-governmental organizations, to adopt in their efforts to prevent commercial sexual exploitation of children.

(a) Publicize and popularize laws for the protection of children against commercial sexual exploitation;

(b) Give prominent visibility to convictions of child sex offenders under those laws, to serve as a deterrent to potential perpetrators;

(c) Promote a culture of rights and positive moral values for society, especially addressing parents, children and members of their families, which may include the following elements:

(i) Respect for all human rights, fostering principles of tolerance and non-discrimination, especially in promoting equal treatment for boys and girls (for example, in access to education);

(ii) Principles of good parenthood, focusing on the evil effects on children of violence and sexual abuse, including incest;

(iii) Elimination of practices founded on culture and tradition which might be inimical to children;

(d) Sensitize and educate children to consciously detect and identify aberrant behaviour and risk factors or situations making them vulnerable to commercial sexual exploitation;

(e) Educate the public on the pernicious and long-lasting consequences of any form of sexual abuse and exploitation of children;

(f) Raise awareness among leaders of mass communications and entertainment industries with a view to sensitizing programmes and services to the needs of children and the protection of their rights;

(g) Conduct public information campaigns to encourage children victims or potential victims of sexual abuse to seek help and assistance and publicize offices and agencies extending such assistance;

(h) Sensitize policy makers, legislators, civic and professional groups and religious leaders and communities to not only the desirability but the absolute necessity of including sex education in school curricula; sex education, including HIV/AIDS awareness raising, is necessary at an early age so that children fully comprehend their responsibilities and the consequences of their sexual behaviour, for their health and their future;

(i) Provide free compulsory primary and secondary education for children;

(j) Mobilize the business sector to fund children's education, inter alia, through grants or scholarships;

(k) Establish a monitoring body, composed of, inter alia, child psychologists and social welfare officers, to approve programmes and initiatives intended to protect and assist children victims of sexual abuse and exploitation so as to ascertain that such programmes do not carry any unintended or unforeseen negative repercussions on children;

(l) Consult with manufacturers of computer hardware and software products, Internet service providers, legislators, parents and children themselves to develop strategies for minimizing the dangers of the Internet's being used for purposes of commercial sexual exploitation of children.

2. Response and intervention

124. Children who have fallen victim to any kind of abuse and exploitation are in desperate need of timely assistance. However, not all assistance may be to the benefit of the child. Entry points for revictimization abound throughout the response mechanisms so that if care is not duly exercised it may very well happen that no response is the better option. The key should be the best interests of the child. The conviction of the offender may never fully compensate for the greater trauma suffered by the child caused by insensitive handling in the hands of the very people offering assistance. It will be

recalled that earlier reports of the Special Rapporteur to the General Assembly (A/51/456) and the Commission on Human Rights (E/CN.4/1997/95) included a special focus on the justice system, with recommendations on how to avoid revictimization of children in the hands of law enforcement officials.

125. Media and education do not only play crucial roles in preventing commercial sexual exploitation of children but also have a tremendous capacity and a certain responsibility to provide response mechanisms to children victims, as well as to intervene, in an informed manner, in cases of sexual abuse of children that come to their attention. The following recommendations are, therefore, addressed to all persons involved in the media and education sectors, in responding to a child's cry for help:

(a) Widely publicize mechanisms for reporting crimes against children;

(b) Widely publicize existing response mechanisms, organizations and agencies providing assistance to children victims, such as telephone hotlines, focal points in relevant government departments and in educational institutions, and local communities;

(c) Sensitize media and educational personnel to the dangers of revictimization of children victims and provide safeguards for avoiding such dangers;

(d) Design and implement training programmes for all sectors of society involved with children, such as teachers, parents, social workers, law enforcement officers and other carers for children, with a view to:

(i) Early detection of signs of physical or sexual abuse;

(ii) Interviewing and confidence-building techniques in dealing with children victims of abuse;

(iii) Sensitization to avoid revictimization;

(e) Ensure informed and sensitive reporting of cases of child sex abuse, in particular protecting the identity, dignity and integrity of the victim;

(f) Sensitize the public to the needs of a child victim of sexual abuse and exploitation so as to avoid ostracism, further revictimization or unfair punishment;

(g) "Break the silence" by encouraging the public to inform relevant authorities of any suspicious activities potentially endangering children, thereby extending valuable assistance in detecting and apprehending child sex abusers;

(h) Reinforce and foster concepts of community responsibility and accountability in protecting and assisting children and their families;

(i) Mobilize the private sector, including computer industries, in the fight against the commercial sexual exploitation of children through,

inter alia, making available hotlines to enable users to report potentially harmful materials on the Internet in an effort to promote self-regulatory controls.

3. Recovery and reintegration

126. Under article 39 of the Convention on the Rights of the Child, a child victim of any form of exploitation or abuse shall receive all appropriate treatment and care to promote his or her physical and psychological recovery and social reintegration, in an environment which fosters the health, self-respect and dignity of the child. It is thus clear that assistance to a child victim does not end with a response to the cry for help by removing the child from an abusive situation or by eliminating the cause of abuse. Such important intervention, some strategies for which are outlined above, must be followed by serious efforts to establish a healing process to redress damage already done. Some recommendations intended to further the recovery and the reintegration into society of child victims are outlined below:

(a) Ensure that all rehabilitation and reintegration programmes and initiatives are professionally evaluated by child psychologists, child psychiatrists or other qualified persons or organizations, with a view to maximizing the benefits for children victims and eliminating any potential harmful effects; monitor periodically the implementation of such programmes and initiatives to ensure that children receive appropriate and informed assistance and care;

(b) Mobilize and involve the business sector in focusing on the plight of economically disadvantaged children with a view to taking proactive initiatives, such as providing children victims of sexual exploitation, prostitution and pornography with alternative income-generating activities, apprenticeships or livelihood training possibilities;

(c) Provide free counselling services for child victims and their families to ensure reintegration of the children within their families and their communities;

(d) Enlist the cooperation of teachers and other children victims to facilitate the return of child victims to school, bearing in mind the right to privacy and integrity of the child.

B. Networking

127. Active and effective cooperation not only between Governments and non-governmental organizations but also between non-governmental organizations themselves is imperative in the fight against sexual abuse and exploitation of children. The Special Rapporteur appreciates the fact that in many countries increased cooperative efforts are already being extended in the promotion and protection of the rights of children by both Governments and non-governmental organizations. The Special Rapporteur, however, cannot but fail to note that the effective identification and allocation of areas of responsibility and

accountability, without competition and at the national level, are yet to be put into place. Most initiatives and programmes which the Special Rapporteur has been able to observe function on an ad hoc basis, without any coordination relating to networking or tapping of sources of funding. The Special Rapporteur strongly believes that close cooperation and openness in sharing information and experiences in protecting the rights of children would mutually strengthen the capacities and successes of each organization, both governmental and non-governmental.

128. Some obstacles to effective networking have been observed, as follows:

(a) Organizations, both governmental and non-governmental, frequently embark on projects which are too far-reaching or all-encompassing to be effective;

(b) A lack of coordination, often already at the fund-seeking stage, leads to duplication and overlap of activities in one sector, thereby neglecting other important areas for providing support to children;

(c) Competition for funding sources often leads to competition and secrecy among organizations;

(d) There exists no accountability for non-implementation.

129. While the Special Rapporteur recognizes that full networking is not feasible in all circumstances, she firmly believes that such active and effective cooperation would not only ensure that comprehensive support is provided to children in all areas, from prevention to reintegration, but would also considerably strengthen the individual organizations working towards this common objective. Some recommendations to this end are put forward below:

(a) Funding agencies and donors should ensure a willingness to fund projects and initiatives in all areas of protecting and promoting the rights of the child in order to maximize support to children;

(b) Funding agencies and donors should carefully evaluate the proposed programmes against the national context and also in the framework of activities already undertaken in related areas;

(c) Consultative meetings between Governments, funding agencies and non-governmental organizations should be held to devise a strategy for effective networking, including the development of a directory of organizations working in the area of children, with descriptions of their specific areas of activities and responsibilities;

(d) Within the United Nations system, such cooperation and coordination to ensure maximization of resources for the benefit of children is also called for.

Notes

[1] "How low should we go? Where to draw the line at revealing the grisly minutiae of the West trial", The Independent, February 1996.

[2] Russell Baker, "Kindly stuff your superhighway", The New York Times.

[3] Statistics taken from the case of American Civil Liberties Union v. Janet Reno, Attorney General of the United States, 1996.

[4] "Drama um 12 jähriges Sexopfer: Bub schoss sich ins Herz", Der Kurier, 6 July 1997.

[5] "State of isolation", The Guardian, 13 April 1995.

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Human rights questions: Human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights and terrorism

Note by the Secretary-General

1. In its resolution 50/186 of 22 December 1995, the General Assembly requested the Secretary-General to continue to seek the views of Member States on the possible establishment of a United Nations voluntary fund for victims of terrorism, as well as ways and means to rehabilitate the victims of terrorism and to reintegrate them into society, and to submit to the Assembly at its fifty-second session, for its consideration, a report containing comments made by Member States on the subject. The Assembly also decided to consider this question at its fifty-second session under the item entitled "Human rights questions".

2. In its resolution 1996/47 of 19 April 1996, the Commission on Human Rights requested the Secretary-General to continue to collect information on this question from all relevant sources and to make it available to the special rapporteurs and working groups concerned and to the Commission for their consideration.

3. On 31 May 1996, the Secretary-General sent a note verbale to Governments inviting them to provide information on the above-mentioned issues. At its fifty-third session, the Commission on Human Rights had before it the report of the Secretary-General (E/CN.4/1997/39), which is hereby transmitted to the General Assembly for its consideration.

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